



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

Mark Sharpless
Manager Network Engineering
HickoryTech Corporation
2730 Third Avenue
P.O. Box 3288
Mankato, MN 56002-3288

Re: HickoryTech Corporation, Mankato and Good Thunder, Minnesota
Consent Agreement and Final Order - Docket No. **EPCRA-05-2009-0027**

Dear Mr. Sharpless:

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 \$15,718 in the manner prescribed in paragraphs 65 - 68, and reference you check with the billing document number 2750944E028 and the docket number EPCRA-05-2009-0027.

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 Terence Stanuch, Associate Regional Counsel, at (312) 886-0844. Thank you for your assistance in resolving this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Ruth McNamara for".

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

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. EPCRA-05-2009-0027
)	
HickoryTech Corporation)	Proceeding to Assess a Civil Penalty Under
Mankato, Minnesota)	Section 325(c)(1) of the Emergency Planning
)	and Community Right-to-Know Act of 1986,
Four Facilities in Mankato, MN and)	42 U.S.C. § 11045(c)(1).
one Facility in Good Thunder, MN.)	
)	
Respondent.)	
_____)	

RECEIVED
AUG 14 2009

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY,**

CONSENT AGREEMENT AND FINAL ORDER

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C § 11045(c)(1), 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 of Practice) as codified at 40 C.F.R. Part 22.
2. Complainant is, by lawful delegation, Chief of the Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is HickoryTech Corporation, a corporation doing business in the State of Minnesota.
4. When the parties agree to settle one or more causes of action before the filing of an administrative complaint, such action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). See 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 best interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, the performance of the Supplemental Environmental Project (SEP) described herein, and to any and all other terms of this 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 and the alleged violations described 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 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), the community emergency coordinator for the local emergency planning committee (LEPC) and the 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 I 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, 42 U.S.C. § 11022(d), 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. Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), assists state and local committees in planning for emergencies and makes information on chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

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

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

Factual Allegations

13. Sulfuric acid, CAS# 7664-93-9, is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

14. Sulfuric acid, CAS# 7664-93-9, is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

15. Sulfuric acid, CAS# 7664-93-9, has a minimum threshold level of 500 pounds as provided in 40 C.F.R. Part 370.

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

17. OSHA requires Respondent to prepare, or have available, an MSDS for sulfuric acid.

Hubbell Street Facility

18. At all times relevant to this matter, Respondent was an owner or operator of a facility located at 101 Hubbell Street, Good Thunder, Minnesota (the Hubbell Street facility).

19. Respondent's Hubbell Street facility consists of 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.

20. Respondent's Hubbell Street facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

21. During at least one period of time in calendar year 2007, sulfuric acid was present at the Hubbell Street facility in an amount equal to or greater than the minimum threshold level.

22. Respondent was required to submit to the SERC and local fire department on or before March 1, 2008, a completed emergency and hazardous chemical inventory form which included the sulfuric acid present at the Hubbell Street facility in 2007.

Countryside Drive Facility

23. At all times relevant to this matter, Respondent was an owner or operator of a facility located at 2003 Countryside Drive, Mankato, Minnesota (the Countryside Drive facility).

24. Respondent's Countryside Drive facility consists of 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.

25. Respondent's Countryside Drive facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

26. During at least one period of time in calendar year 2007, sulfuric acid was present at the Countryside Drive facility in an amount equal to or greater than the minimum threshold level.

27. Respondent was required to submit to the SERC and local fire department on or before March 1, 2008, a completed emergency and hazardous chemical inventory form which included the sulfuric acid present at the Countryside Drive facility in 2007.

Industrial Road Facility

28. At all times relevant to this matter, Respondent was an owner or operator of a facility located at 580 Industrial Road, Mankato, Minnesota (the Industrial Road facility).

29. Respondent's Industrial Road facility consists of 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.

30. Respondent's Industrial Road facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

31. During at least one period of time in calendar year 2007, sulfuric acid was present at the Industrial Road facility in an amount equal to or greater than the minimum threshold level.

32. Respondent was required to submit to the SERC and local fire department on or before March 1, 2008, a completed emergency and hazardous chemical inventory form which included the sulfuric acid present at the Industrial Road facility in 2007.

Bunting Lane Facility

33. At all times relevant to this matter, Respondent was an owner or operator of a facility located at 251 Bunting Lane, Mankato, Minnesota (Bunting Lane facility).

34. Respondent's Bunting Lane facility consists of 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.

35. Respondent's Bunting Lane facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

36. During at least one period of time in calendar year 2007, sulfuric acid was present at the Bunting Lane facility in an amount equal to or greater than the minimum threshold level.

37. Respondent was required to submit to the SERC and local fire department on or before March 1, 2008, a completed emergency and hazardous chemical inventory form which included the sulfuric acid present at the Bunting Lane facility in 2007.

Hickory Street Facility

38. At all times relevant to this matter, Respondent was an owner or operator of a facility located at 221 East Hickory Street, Mankato, Minnesota (the Hickory Street facility).

39. At all times relevant to this matter, Respondent was an employer and, therefore an operator, at the Hickory Street facility.

40. Respondent's Hickory Street 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.

41. Respondent's Hickory Street facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

42. During at least one period of time in calendar year 2007, sulfuric acid was present at the Hickory Street facility in an amount equal to or greater than the minimum threshold level.

43. Respondent was required to submit to the SERC and local fire department on or before March 1, 2008, a completed emergency and hazardous chemical inventory form which included the sulfuric acid present at the Hickory Street facility in 2007.

44. At all times relevant to this matter, the Minnesota Department of Public Safety was the SERC for the State of Minnesota under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

45. At all times relevant to this matter, the Mankato Fire Department was the fire department with jurisdiction over the Countryside Drive, Industrial Road, Bunting Lane, and Hickory Street facilities.

46. At all times relevant to this matter, the Good Thunder Fire Department was the fire department with jurisdiction over the Hubbell Street facility.

Alleged Violations

47. If Complainant were to file a complaint in this matter, the complaint would have alleged the following:

Hubbell Street Facility

48. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Hubbell Street facility, which included sulfuric acid, on September 23, 2008 for calendar year 2007.

49. Respondent submitted to the Good Thunder Fire Department a completed Emergency and Hazardous Chemical Inventory Form for the Hubbell Street facility, which included sulfuric acid, on September 23, 2008 for calendar year 2007.

50. Each day Respondent failed to submit to the SERC and the Good Thunder Fire Department completed Emergency and Hazardous Chemical Inventory Forms which included sulfuric acid, by March 1, 2008 for calendar year 2007, constituted separate violations of Section 312(a) of EPCRA, 42 U.S.C. §11022(a).

Countryside Drive Facility

51. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Countryside Drive facility, which included sulfuric acid, on September 23, 2008 for calendar year 2007.

52. Respondent submitted to the Mankato Fire Department a completed Emergency and Hazardous Chemical Inventory Form for the Countryside Drive facility, which included sulfuric acid, on September 23, 2008 for calendar year 2007.

53. Each day Respondent failed to submit to the SERC and the Mankato Fire Department completed Emergency and Hazardous Chemical Inventory Forms which included sulfuric acid, by March 1, 2008 for calendar year 2007, constituted separate violations of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Industrial Road Facility

54. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Industrial Road facility, which included sulfuric acid, on September 23, 2008 for calendar year 2007.

55. Respondent submitted to the Mankato Fire Department a completed Emergency and Hazardous Chemical Inventory Form for the Industrial Road facility, which included sulfuric acid, on September 23, 2008 for calendar year 2007.

56. Each day Respondent failed to submit to the SERC and the Mankato Fire Department completed Emergency and Hazardous Chemical Inventory Forms which included sulfuric acid, by March 1, 2008 for calendar year 2007, constituted separate violations of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Bunting Lane Facility

57. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Bunting Lane facility, which included sulfuric acid, on September 23, 2008 for calendar year 2007.

58. Respondent submitted to the Mankato Fire Department a completed Emergency and Hazardous Chemical Inventory Form for the Bunting Lane facility, which included sulfuric acid, on September 23, 2008 for calendar year 2007.

59. Each day Respondent failed to submit to the SERC and the Mankato Fire Department completed Emergency and Hazardous Chemical Inventory Forms which included sulfuric acid, by March 1, 2008 for calendar year 2007, constituted separate violations of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Hickory Street Facility

60. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form for the Hickory Street facility, which included sulfuric acid, on September 23, 2008 for calendar year 2007.

61. Respondent submitted to the Mankato Fire Department a completed Emergency and Hazardous Chemical Inventory Form for the Hickory Street facility, which included sulfuric acid, on September 23, 2008 for calendar year 2007.

62. Each day Respondent failed to submit to the SERC and the Mankato Fire Department completed Emergency and Hazardous Chemical Inventory Forms which included sulfuric acid, by March 1, 2008 for calendar year 2007, constituted separate violations of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

Civil Penalty

63. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that \$62,873 was an appropriate civil penalty to settle this action before Respondent agreed to perform the SEP specified herein. In determining this penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations; and with respect to the Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation; its cooperation and willingness to quickly resolve this matter; and any other matters that justice may require. Complainant also considered U.S. EPA's *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).

64. In consideration of Respondent's agreement to perform a SEP, and after applying the settlement guidance and percentages as specified in U.S. EPA's *Supplemental Environmental Projects Policy* (May 1, 1998), U.S. EPA has agreed to reduce the \$62,873 civil penalty to \$15,718.

65. Respondent agrees to pay the \$15,718 civil penalty within 30 days after the effective date of this CAFO.

66. Respondent agrees to make its penalty payment in one of the following ways:

(a) For a check sent by U.S. Postal Service mail, Respondent shall send a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must also note the following: the case title, the docket number of this CAFO and the billing document number (the billing document number will be assigned in a separate letter).

(b) For a check sent by overnight mail, Respondent shall send a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, MO 63101

The check must also note the following: the case title, the docket number of this CAFO and the billing document number.

(c) For an electronic funds transfer, Respondent shall wire the payment, payable to "Treasurer, United States of America," to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read: "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: the case title, the docket number of this CAFO and the billing document number.

(d) Respondent may also make its payment on-line through the Department of Treasury by going to www.pay.gov and entering "SFO 1.1" in the "Search Public Forms" field.

67. For a payment made by U.S. Postal Service mail or overnight mail, Respondent shall also send a transmittal letter which states Respondent's name, complete address, the case docket number and the billing document number along with the payment. Respondent shall also send a copy of the check and transmittal letter to:

Regional Hearing Clerk (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

Terence Stanuch
Office of Regional Counsel (C-14J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

68. For a payment made by electronic funds transfer or on-line, Respondent shall send a letter to the addressees listed in the immediate paragraph above which states Respondent's name, complete address, the case docket number and the billing document number, and the date of the electronic funds transfer or on-line payment.

69. If Respondent does not pay the civil penalty timely, the 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.

70. Pursuant to 31 C.F.R. § 901.9 and 31 U.S.C. § 3717, Respondent shall pay the following interest and late charges on any amount overdue pursuant to this CAFO:

(a) Interest. Any unpaid portion of the civil penalty shall bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on any unpaid portion of the civil penalty that is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 31 C.F.R. § 901.9(b).

(b) Monthly Handling Charge. Respondent shall pay a late payment handling charge of fifteen dollars (\$15.00) on any late payment, with an additional charge of fifteen dollars (\$15.00) for each subsequent thirty (30) calendar day period over which an unpaid balance remains.

(c) Non-Payment Penalty. On any portion of the civil penalty that is past due more than ninety (90) calendar days, Respondent shall pay a non-payment penalty of six percent (6%) per year which will accrue from the date the penalty payment became due and was not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b) above.

Supplemental Environmental Project

71. Respondent agrees to replace 184 batteries, by June 30, 2010, with new Valve Regulated Lead Acid batteries as specified in their March 6, 2009 settlement proposal letter, at the following six locations that are part of Respondent's telecommunications network:

- (a). St. Peter, Minnesota;
- (b). Boyden, Iowa;
- (c). Doon, Iowa;
- (d). Rock Rapids, Iowa;
- (e). Haywarden, Iowa; and
- (f). Lakota, Iowa.

72. Respondent estimated that the total cost to complete this SEP is approximately \$97,264.

73. Respondent agrees to apply for and obtain all permits and approvals necessary for the implementation and completion of this SEP.

74. Respondent certifies that:

(a). it is not required to perform or develop this SEP pursuant to any Federal, State or local law or regulation; and

(b). it is not funding any aspect of this SEP with any funding provided by a Federal, State, or local grant; and

(c). it is not required to perform or develop this SEP pursuant to a settlement of any Federal, State, or local enforcement action; and

(d). it has not received, nor is presently negotiating to receive, credit for this SEP in any other enforcement action.

75. The determination of whether Respondent has fulfilled the requirements of this SEP as specified in this CAFO shall be in the sole discretion of the U.S. EPA.

76. Respondent agrees to submit to the U.S. EPA on September 30, 2009 an initial status report summarizing Respondent's progress in completing this SEP, and additional status reports on December 31, 2009, and March 31, 2010, summarizing Respondent's progress in completing this SEP noting any significant accomplishments made and/or any difficulties encountered during the previous three (3) months.

77. Respondent agrees to submit to the U.S. EPA on or before June 30, 2010, a certified statement that includes the dollar amount Respondent expended to complete this SEP and a statement that:

(a). the SEP has been completed in accordance with the specifications listed in Respondent's March 6, 2009 settlement proposal; or

(b). if the SEP has not been completed in accordance with the specifications listed in Respondent's March 6, 2009 settlement proposal, an explanation of which batteries were replaced, and an explanation of which batteries were not replaced and why certain batteries were not replaced.

78. Respondent agrees that any public statements, oral or written, made by Respondent which make reference to this SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of the Emergency Planning and Community Right-to-Know Act."

79. Respondent agrees to allow the U.S. EPA to inspect Respondent's Facilities at any time in order to confirm that this SEP has been properly completed.

Notices and Submittals

80. Whenever, under the terms of this CAFO, notice is required to be given or a submittal sent by one Party to the other, it shall be directed to the individuals at the addresses specified below:

(a). For U.S. EPA:

Ms. McNamara and Mr. Stanuch at their addresses listed above. For your information, Ms. McNamara's telephone number is (312) 353-3193, and her email address is mcnamara.ruth@epa.gov; and Mr. Stanuch's telephone number is (312) 886-8044, and his email address is stanuch.terry@epa.gov.

(b). For Respondent:

William Vandersluis
Director of Regulatory Affairs
HickoryTech Corporation
221 East Hickory Street
P.O. Box 3248
Mankato, MN 56002-3248

81. Following receipt of any report or submittal required pursuant to the SEP, the U.S. EPA may take one of the following actions:

- (a). accept the report;
- (b). reject the report, notify Respondent in writing of deficiencies in the report and grant Respondent an additional thirty (30) calendar days in which to correct the deficiencies; or
- (c). reject the report and seek stipulated penalties in accordance with the *Stipulated Penalties* section of this CAFO.

82. If the U.S. EPA decides to exercise either option (b) or (c) in the paragraph above, or assess stipulated penalties under any provision of this CAFO, Respondent shall have an opportunity to object, in writing, to the U.S. EPA's decision within ten (10) calendar days of receipt of such decision. The U.S. EPA and Respondent shall then have an additional thirty (30) calendar days from the receipt by the U.S. EPA of Respondent's notification of objection to reach agreement regarding this dispute. If an agreement cannot be reached on such issue within this thirty (30) day period, the U.S. EPA shall provide Respondent a written statement of its decision. Respondent shall have the

opportunity to appeal any adverse decision to the Chief of the Emergency Response Branch 1, Superfund Division, U.S. EPA, Region 5, within ten (10) calendar days of receipt of such decision. The decision of the Chief of the of the Emergency Response Branch 1 shall be final and binding upon Respondent, and Respondent agrees to comply with any requirements imposed by the U.S. EPA as a result of any such deficiency or failure to comply with the terms of this CAFO. In the event the SEP is not completed as contemplated herein, as determined by the U.S. EPA, stipulated penalties shall be due and payable by Respondent to the U.S. EPA as specified below.

Stipulated Penalties

83. If Respondent's expenditures to complete the SEP described herein amount to less than 90% of \$97,264 (i.e. \$87,537, rounded to the lowest dollar), Respondent agrees to pay a stipulated penalty amounting to 48% of the difference between the actual amount expended to complete the SEP and \$87,537. For example, if Respondent spent \$82,500 to complete the SEP, the stipulated penalty would be calculated as follows:

- (a). \$87,537 minus 82,500 equals \$5,037;
- (b). \$5,037 times 0.48 equals \$2,417.76;
- (c). \$2,417.76 rounded to the lowest dollar is \$2,417, which would be the

stipulated penalty due under this example.

84. With the exception of the payment of the civil penalty specified herein, Respondent agrees to pay the following stipulated penalties for failure to comply with any other deadline specified in this CAFO:

<u>Period of Noncompliance</u>	<u>Penalty per violation per day</u>
Days 1 through 14	\$ 250
Days 15 through 30	\$ 500
Days 31 and beyond	\$ 750

85. Stipulated penalties shall begin to accrue on the calendar day after performance is due and shall continue to accrue through the final day of the completion of the activity.

86. Respondent agrees to pay any stipulated penalty within fifteen (15) calendar days of receipt of a written demand by the U.S. EPA for such penalty. The method of payment shall be in accordance with the payment provisions specified in the "*Civil Penalty*" section this CAFO. Interest and late charges shall also accrue and be paid as specified in the "*Civil Penalty*" section of this CAFO.

87. Nothing in this agreement shall be construed as prohibiting, altering or in any way limiting the ability of the U.S. EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this agreement or of the statutes and regulations upon which this agreement is based, or for Respondent's violation of any applicable provision of law.

Extensions of Time and Force Majure

88. If any event occurs which causes or may cause delays in Respondent's compliance with any requirement of this CAFO, Respondent agrees to notify the Agency in writing within ten (10) calendar days of the delay of Respondent's knowledge of the anticipated delay, whichever is earlier. This notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. Respondent agrees to adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and will constitute a waiver of the Respondent's right to request an extension of its obligation under this CAFO based on such incident.

89. If the U.S. EPA agrees that the delay or anticipated delay in compliance with the requirements of this CAFO has been or will be caused by circumstances entirely beyond Respondent's control, the time for performance hereunder may be extended for a period no longer than the delay resulting from such circumstances. In such event, the Parties shall stipulate to such an extension of time.

90. If the U.S. EPA does not agree that a delay in achieving compliance with the requirements of this CAFO has been or will be caused by circumstances beyond Respondent's control, the U.S. EPA will notify Respondent in writing of its decision and any delays in the completion of the requirement in question will not be excused. However, the U.S. EPA avers that any request by Respondent for an extension of time pursuant to this section shall not be unreasonably denied.

91. The burden of proving that any delay is caused by circumstances entirely beyond Respondent's control shall rest with Respondent. Increased costs or expenses associated with the requirements of this CAFO shall not be a basis for changes in this CAFO or extensions of time under this section. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

General Provisions

92. Respondent agrees that the civil penalty and any stipulated penalties that may become due under the terms of this CAFO are not deductible for federal tax purposes.

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

94. 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.

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

96. This CAFO is a "final order" for purposes of U.S. EPA's *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), for Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

98. Each person signing this CAFO certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to the terms and conditions of this CAFO.

99. Each party agrees to bear its own costs and attorney's fees in this action.

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

In the Matter of:

Hickory Tech Corporation, Mankato and Good Thunder, Minnesota
Consent Agreement and Final Order
Docket No.

SIGNATORIES

For HickoryTech Corporation, Mankato, Minnesota, Respondent:

July 27, 2009
Date

Damon D. Dutz V.P.
Signature and Title

Damon D. Dutz
Printed name

For the United States Environmental Protection Agency, Complainant:

8-10-09
Date

Jo-El-Zein
Jason El-Zein, Chief
Emergency Response Branch 1
Superfund Division
United States Environmental Protection Agency
Region 5

8-10-09
Date

Richard C. Karl
Richard C. Karl, Director
Superfund Division
United States Environmental Protection Agency
Region 5


In the Matter of:

Hickory Tech Corporation, Mankato and Good Thunder, Minnesota
Consent Agreement and Final Order
Docket No. **EPCRA-05-2009-0027**

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, U.S. EPA, Region 5. 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
United States Environmental Protection Agency
Region 5

RECEIVED

AUG 14 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:

Hickory Tech Corporation, Mankato and Good Thunder, Minnesota
Consent Agreement and Final Order
Docket No. **EPCRA-05-2009-0027**

Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number **EPCRA-05-2009-0027** 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 Respondent by placing them in the custody of the United States Postal Service addressed as follows:

Mark Sharpless
Manager Network Engineering
Hickory Tech Corporation
2730 Third Avenue
P.O. Box 3288
Mankato, MN 56002-3288

RECEIVED
AUG 14 2009
REGIONAL HEARING CLERK
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PROTECTION AGENCY

on the 14th day of August, 2009

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