



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

SEP 29 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Teresa Zube
Plant Coordinator, Countryside
Johnsonville Sausage, LLC
N9628 Johnsonville Way
Sheboygan Falls, Wisconsin 53085

Re: Johnsonville Sausage LLC, Sheboygan, Wisconsin
Consent Agreement and Final Order – Docket No: **CERCLA-05-2009-0011**

Dear Ms. Zube:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on September 29, 2009.

Please pay the CERCLA civil penalty in the amount of \$ 5,000 in the manner prescribed in paragraphs 26-31 and reference your check with the billing document number 2750930B014 and docket number CERCLA-05-2009-0011.

Your payment is due on October 29, 2009 (within 30 calendar days of the filing date).

Please feel free to contact Ginger Jager at (312) 886-0767 if you have any questions regarding the enclosed documents. Please direct any legal questions to Christine Liszewski, Assistant Regional Counsel, at (312) 886-4670. Thank you for your assistance in resolving this matter.

Sincerely,

Mark J. Horwitz
Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

**cc: Regional Hearing Clerk
U.S. EPA Region 5**

**Christine Liszewski
Office of Regional Counsel
U.S. EPA Region 5**

Dawn Miller, WI SERC (w/enclosure)

**Marcy Toney (w/enclosure)
Regional Judicial Officer**

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and 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), provides a mechanism to alert the NRC 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 government's response to an emergency and pose serious threats to human health and the environment.

11. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. 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 from March 16, 2004 through January 12, 2009, and to \$37,500 per day

for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

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

13. At all times relevant to this CAFO, Respondent was in charge of the facility located at W4202 County Highway J, Sheboygan Falls, Wisconsin known as the Countryside Facility (facility).

14. Respondent’s facility consists of a building, structure, installation, equipment, pipe or pipeline, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

15. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Anhydrous 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).

17. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On January 25, 2005, at or about 12:30 a.m., a release occurred from Respondent’s facility of approximately 972 pounds of anhydrous ammonia (the release) based on a maximum theoretical loss calculation performed by Respondent.

19. In a 24 hour time period, the release of anhydrous ammonia exceeded 100 pounds.

20. During the release, approximately 972 pounds of liquid anhydrous ammonia leaked onto the roof of the facility and was absorbed by the snow on the roof and/or volatilized. Any

anhydrous ammonia that was volatilized was emitted into the ambient air.

21. The release is a “release” as that term is defined under Section 101(22) of CERCLA § 42 U.S.C. § 9601(22).

22. Respondent had knowledge of the release on January 25, 2005 at approximately 12:30 a.m.

23. Respondent notified the NRC of the release on January 27, 2005 at 12:30 p.m.

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

25. 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).

Civil Penalty

26. In consideration of Respondent’s cooperation and agreement to perform a supplemental environmental project, EPA has determined that an appropriate civil penalty to settle this action is \$5,000.

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,000 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier’s or certified check, payable to “EPA Hazardous Substance Superfund,” by express mail to:

U.S. Bank
Government Lockbox 979076 EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: Johnsonville Sausage, LLC, the docket number of this CAFO and the billing document number **2750930B014**.

28. A transmittal letter, stating Respondent’s name, the case title, Respondent’s

complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-19J)
EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

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

Christine Liszewski, (C-14J)
Office of Regional Counsel
EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

30. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 43, below, 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.

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

Supplemental Environmental Project

32. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by purchasing and installing ammonia detectors and a centralized monitoring panel at its facility.

33. At its Countryside facility in Sheboygan Falls, Wisconsin, Respondent must complete the SEP as follows:

- a. Within 90 days after the effective date of the CAFO, Respondent shall enter into a contract for the purchase and installation of four (4) ammonia detectors and one (1) centralized monitoring panel;
- b. Within 160 days of the effective date of the CAFO, Respondent shall install four (4) ammonia detectors inside four (4) pressure relief headers in the ammonia refrigeration system and one (1) centralized monitoring panel in the main Engine Room; and
- c. Within 160 days of the effective date of the CAFO, Respondent shall connect the four (4) new ammonia detectors and the existing ammonia detectors to a centralized alarm system and begin operating the equipment installed as a SEP.

34. Respondent must spend at least \$25,000 to purchase and install the ammonia detectors and centralized monitoring panel.

35. Respondent must continuously use or operate the equipment installed as the SEP for five years following its installation. During this five year period, Respondent may discontinue use of the equipment for a limited time period as necessary to perform preventative maintenance and repairs.

36. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

37. EPA may inspect the facility at any reasonable time to monitor Respondent's

compliance with this CAFO's SEP requirements.

38. Respondent must submit a SEP completion report to EPA within 30 days after the date established for completion of the SEP in paragraph 33, above. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

39. Respondent must submit all notices and reports required by this CAFO by first class mail to Ginger Jager of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 28, above.

40. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

41. Following receipt of the SEP completion report described in paragraph 38, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and EPA will seek stipulated penalties under paragraph 43.

42. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that EPA imposes in its decision. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 43, below.

43. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than the amount set forth in paragraph 34, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 34.
- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$5,000 in addition to any penalty required under subparagraph a, above.
- c. If Respondent halts or abandons work on the SEP, Respondent must pay a stipulated penalty of \$5,000 in addition to the penalty required under subparagraph a, above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 33, above, for implementing the SEP, fails to submit timely the SEP completion report, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>
\$200
\$300
\$500

<u>Period of Noncompliance</u>
1st through 14th day
15th through 30th day
31st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone, until it achieves compliance with the milestone.

44. EPA's determination of whether Respondent satisfactorily completed the SEP will bind Respondent.

45. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 27 and 28, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

46. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for alleged violations of Section 103 of CERCLA."

47. Nothing in this CAFO is intended to nor will be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

48. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

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

51. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

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

53. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for Section 103 of CERCLA.

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

55. 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.

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

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

Johnsonville Sausage, LLC, Respondent

8/12/09
Date

Teresa Zube
Teresa Zube, Plant Coordinator, Countryside
Johnsonville Sausage, LLC

In the Matter of:
Johnsonville Sausage, LLC
Docket No. _____

U.S. Environmental Protection Agency, Complainant

September 21, 2009
Date

Mark J. Horwitz
Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section
Emergency Response Branch 1
Superfund Division

9.21-09
Date

Richard C. Karl
Richard C. Karl, Director
Superfund Division

In the Matter of:
Johnsonville Sausage, LLC
Docket No. CERCLA-05-2009-0011

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.

9/22/09
Date

Walter W. Kovalick
for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

RECEIVED
SEP 29 2009
REGIONAL HEARING CLERK
USEPA
REGION 5

U.S. ENVIRONMENTAL
PROTECTION AGENCY
OFFICE OF REGIONAL
COUNSEL
AUG 18 2009

In the Matter of:
Johnsonville Sausage, LLC
Docket No. CERCLA-05-2009-0011

Certificate of Service

I, Ginger Jager, certify that I hand delivered one original of the Consent Agreement and Final Order, docket number CERCLA-05-2009-0011, to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed one original by first-class, postage prepaid, certified mail, return receipt requested, to Johnsonville Sausage, LLC, by placing it in the custody of the United States Postal Service addressed as follows:

Teresa Zube, Plant Coordinator, Countryside
Johnsonville Sausage, LLC
N6928 Johnsonville Way
Sheboygan Falls, Wisconsin 53085

RECEIVED
SEP 29 2009

REGIONAL HEARING CLERK
USEPA
REGION 5

on the 29th day of September, 2009


Ginger Jager
U.S. Environmental Protection Agency
Region 5