



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

SEP 17 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Eryk J. Spytek
Vice President, Associate General Counsel and Assistant Secretary
Mead Johnson & Company, LLC
2701 Patriot Boulevard
Glenview, Illinois 60026

Re: Mead Johnson & Company, LLC, Zeeland, Michigan, Consent Agreement and Final
Order Docket Nos. MM-05-2013-0009 CERCLA-05-2013-0013 EPCRA-05-2013-0026

Dear Mr. Spytek:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO)
in resolution of the above case. The U.S. Environmental Protection Agency has filed the original
CAFO with the Regional Hearing Clerk on SEP 17 2013.

Please pay the Comprehensive Environmental Response, Compensation and Liability Act civil
penalty in the amount of \$19,200 in the manner prescribed in paragraph 49, and reference your
check with the billing document number CERCLA-05-2013-0013 and the docket
number 2751330B013.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the
amount of \$19,200 in the manner prescribed in paragraph 51, and reference your check with the
docket number EPCRA-05-2013-0026.

Your payments are due on October 17, 2013.

Please feel free to contact James Entzminger, at (312) 886-4062 if you have any questions
regarding the enclosed documents. Please direct any legal questions to Tamara Carnovsky,
Associate Regional Counsel, at (312) 886-2250. Thank you for your assistance in resolving this
matter.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

MM-05-2013-0009

In the Matter of:) Docket Nos. CERCLA-05-2013-0013 EPCRA-05-2013-0026
)
Mead Johnson & Company, LLC,) Proceeding to Assess a Civil Penalty Under
Zeeland, Michigan) Section 109(b) of the Comprehensive
) Environmental Response, Compensation and
Respondent.) Liability Act, and Section 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 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 Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. The Respondent is Mead Johnson & Company, LLC, a Delaware limited liability company doing business in the State of Michigan.

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 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 reportable quantity of the hazardous substance.

10. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires the owner or operator of a facility to 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 a quantity 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).

11. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), the owner or operator of a facility must give the notice required under 304(a) of EPCRA, 42 U.S.C. § 11004(a), immediately after the release, 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 response commission (SERC) of any state likely to be affected by a release.

12. 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 and state agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and 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.

13. Under 29 C.F.R. § 1910.1200(d), chemicals classified as hazardous chemicals under 29 C.F.R. Part 1910.1200 Appendix A or B 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 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties 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 725 East Main, Zeeland, Michigan (facility).

18. At all times relevant to this CAFO, Respondent was in charge of the facility.

19. Respondent's "facility" consists of buildings, structures, equipment, pipe or

pipeline, and storage containers.

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. Chlorine (CAS #7782-50-5) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. Chlorine (CAS #7782-50-5) has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

25. The Material Safety Data Sheet (MSDS) for chlorine lists physical hazards associated with chlorine.

26. Chlorine (CAS #7782-50-5) is classified as 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.

27. At all times relevant to this CAFO, Respondent used or stored chlorine at the facility.

28. Chlorine (CAS #7782-50-5) is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

29. Chlorine (CAS #7782-50-5) has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

30. On May 29, 2012, at or about 1:10 p.m., a release of chlorine began from

Respondent's facility of approximately 450 pounds of chlorine (the release).

31. In a 24 hour time period, the release of chlorine exceeded 10 pounds.

32. During the release, approximately 450 pounds leaked, emitted, or escaped into the outdoor air from a chlorine cylinder storage space opening to the exterior of the building.

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 that the release began on May 29, 2012, at approximately 1:10 p.m.

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 required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

38. The release was likely to affect Michigan.

39. At all times relevant to this CAFO, the Michigan Citizen-Community Emergency Response Coordinating Council was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

40. The release was likely to affect Ottawa County, Michigan.

41. At all times relevant to this CAFO, the Ottawa County LEPC was the LEPC for Ottawa County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

42. Respondent notified the NRC of the release on May 29, 2012, at 4:29 p.m.

43. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release of a reportable quantity.

44. 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).

45. Respondent notified the Michigan SERC of the release on May 29, 2012, at 4:15 p.m.

46. Respondent did not immediately notify the SERC after Respondent had knowledge of the release of a reportable quantity.

47. 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).

48. Respondent voluntarily made expenditures for chlorine storage area upgrades at its facility which Complainant has considered in connection with this CAFO.

Civil Penalty

49. Complainant has determined that an appropriate civil penalty to settle this action is \$19,200 for the alleged CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as 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, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

50. Within 30 days after the effective date of this CAFO, Respondent must pay a \$19,200 civil penalty for the alleged CERCLA violation 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: Mead Johnson & Company, LLC, the docket number of this CAFO and the billing document number 2751330B013.

51. Complainant has determined that an appropriate civil penalty to settle this action is \$19,200 for the alleged EPCRA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered EPCRA/CERCLA Enforcement Response Policy.

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$19,200 civil penalty for the alleged EPCRA violations. Respondent must pay the 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: Mead Johnson & Company, LLC, and the docket number of this CAFO.

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

54. 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.

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 rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

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

59. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

61. 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.

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

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

U.S. Environmental Protection Agency, Complainant

9/9/13
Date _____



Sharon Jaffess, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

9/10/2013
Date _____


for 

Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of Mead Johnson & Company, LLC, Respondent

27 Aug 2013

Date



Michael Robson
Director, Global EHS
Department of Law, Compliance and Ethics
Mead Johnson & Company, LLC.

In the Matter of Mead Johnson & Company, LLC, Zeeland, Michigan:

Docket Nos. MM-05-2013-0009

CERCLA-05-2013-0013

EPCRA-05-2013-0026

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.

9-13-16

Date



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



In the Matter of Mead Johnson & Company, LLC, Zeeland, Michigan:

Docket Nos. MM-05-2013-0009

CERCLA-05-2013-0013

EPCRA-05-2013-0026

Certificate of Service

Sarah Sanders

I, ~~James Entzminger~~, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Mr. Michael Robinson, Esq.
Warner Norcross & Judd LLP
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, MI 49503

Mr. Stanley P. Barringer, Jr.
Mead Johnson & Company, LLC
Legal Department – Mail Code B604
2400 W. Lloyd Expressway
Evansville, IN 47721-0001



on the 17 day of September, 2013

[Handwritten signature]

~~James Entzminger~~ — *Sarah P. Sanders*
U.S. Environmental Protection Agency
Region 5