



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUN 13 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Peter Ercoli
General Manager
Eurand, Inc.
845 Center Drive.
Vandalia, Ohio 45377

Re: Eurand, Inc., Vandalia, Ohio, Consent Agreement and Final Order
Docket Nos. MM-05-2011-0011 CERCLA-05-2011-0015 EPCRA-05-2011-0020

Dear Mr. Ercoli:

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 JUN 13 2011.

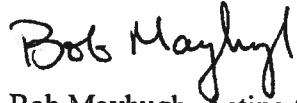
Please pay the Comprehensive Environmental Response, Compensation, and Liability Act civil penalty in the amount of \$20,820 in the manner prescribed in paragraphs 62 and 63, and reference your check with the billing document number 2751130B014 and the docket number CERCLA-05-2011-0015.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$148,590 in the manner prescribed in paragraphs 64 and 65, and reference your check with the billing document number 2751144E018 and the docket number EPCRA-05-2011-0020.

Your payments are due on JUL 13 2011.

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 Robert H. Smith, Associate Regional Counsel, at (312) 886-0765. Thank you for your assistance in resolving this matter.

Sincerely,



Bob Mayhugh, Acting Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Ms. Cindy DeWulf, Co-Chairperson (w/ enclosure)
Ms. Nancy Dragani, Co-Chairperson (w/ enclosure)
Jeff Beattie (w/ enclosure)
Mel House (w/ enclosure)
OH SERC

Christopher R. Schraff
Attorney for Eurand, Inc.
Porter Wright Morris & Arthur, LLP
41 South High Street, Suites 2800-3200
Columbus, OH 43215-6194

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

MM-05-2011-0011 EPCRA-05-2011-0020

In the Matter of:

Eurand, Inc.
Vandalia, Ohio

Respondent.



Docket Nos. CERCLA-05-2011-0015

Proceeding to Assess a Civil Penalty Under
Section 109(b) of the Comprehensive
Environmental Response, Compensation,
and 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 Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Eurand, Inc. a corporation doing business in the State of Ohio.
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)(3)(A) of EPCRA, 42 U.S.C. § 11004(a)(3)(A), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of a hazardous substance in quantities 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. 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, state, and local agencies 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 governments' response to an emergency and pose serious threats to human health and the environment.

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

13. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

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

15. 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), authorizes 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 \$27,500 per day of violation for violations that occurred after January 31, 1997 through March 15, 2004, to \$32,500 per day of violation for violations that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

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

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

18. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 845 Center Drive, Vandalia, Ohio (facility).

19. At all times relevant to this CAFO, Respondent was an employer at the facility.

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

21. Respondent’s facility consists of a building, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

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

23. 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.

24. Respondent’s facility is a “facility” as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

25. Cyclohexane (CAS # 110-82-7) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

26. Cyclohexane 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.

27. Cyclohexane (CAS # 110-82-7) is 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(c).

28. At all times relevant to this CAFO, Respondent produced, used, or stored cyclohexane at the facility.

29. Cyclohexane (CAS # 110-82-7) has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

30. On December 31, 2009, at or about 1:45 p.m., Eastern Standard Time, a release occurred from Respondent's facility of approximately 27,216 pounds of cyclohexane (the release).

31. In a 24 hour time period, the release of cyclohexane exceeded 1,000 pounds.

32. During the release, approximately 27,216 pounds of cyclohexane was released into the air.

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 of the release on January 3, 2010, at approximately 11:15 p.m., Eastern Standard Time.

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 Ohio.

39. At all times relevant to this CAFO, the Ohio Environmental Protection Agency was the SERC for Ohio under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

40. The release was likely to affect Montgomery County.

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

Count 1 (failure to notify NRC)

42. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

43. Respondent notified the NRC of the release on January 4, 2010, at 4:59 p.m., Eastern Standard Time.

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

45. 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).

Count 2 (failure to notify SERC)

46. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

47. Respondent notified the Ohio SERC of the release on January 5, 2010, at 9:15 a.m., Eastern Standard Time.

48. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

49. 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).

Count 3 (failure to notify LEPC)

50. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

51. Respondent notified the LEPC of the release on May 10, 2010, at 3:15 p.m., Eastern Standard Time.

52. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

53. Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 4 (written notice to SERC)

54. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

55. Respondent provided written follow-up emergency notice of the release to the SERC on May 10, 2010.

56. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

57. Respondent's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Count 5 (written notice to LEPC)

58. Complainant incorporates paragraphs 1 through 41 of this CAFO as if set forth in this paragraph.

59. Respondent provided written follow-up emergency notice of the release to the LEPC on May 10, 2010.

60. Respondent did not provide the LEPC written follow-up emergency notice of the release as soon as practicable after the release occurred.

61. Respondent's failure to provide written follow-up emergency notice of the release to the LEPC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Civil Penalty

62. Complainant has determined that an appropriate civil penalty to settle this action is \$20,820 for the 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).

63. Within 30 days after the effective date of this CAFO, Respondent must pay a \$20,820 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," to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

for checks sent by express mail to:

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

The check must note the following: Eurand, Inc., the docket number of this CAFO, and the billing document number 2751130B014

64. Complainant has determined that an appropriate civil penalty to settle this action is \$148,590 for the 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 U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

65. Within 30 days after the effective date of this CAFO, Respondent must pay a \$148,590 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "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

for checks sent by express mail to:

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: Eurand, Inc., the docket number of this CAFO, and the billing document number 2751144E018

66. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket numbers, and the billing document number must accompany each payment. Respondent must send a copy of the checks and transmittal letters to:

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

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

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

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

68. 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.

69. 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

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

71. 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.

72. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304 of EPCRA, 42 U.S.C. § 11004.

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

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

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

76. 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.

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

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

In the Matter of: Eurand, Inc., Vandalia, Ohio
Docket No. _____

Eurand, Inc., Respondent


May 27th, 2011
Date



Dan Salain
Vice President of Global Manufacturing
Eurand, Inc.

U.S. Environmental Protection Agency, Complainant

6-7-11
Date



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

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.

6-9-11

Date



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

RECEIVED
JUN 13 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

U.S. ENVIRONMENTAL PROTECTION AGENCY
REGIONAL HEARING CLERK
OFFICE OF REGIONAL
ADMINISTRATION
1200 EAST 17TH AVENUE
DENVER, CO 80202

In the Matter of: Eurand, Inc., Vandalia, Ohio

Docket No. MM-05-2011-0011

CERCLA-05-2011-0015

EPCRA-05-2011-0020

Certificate of Service

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:

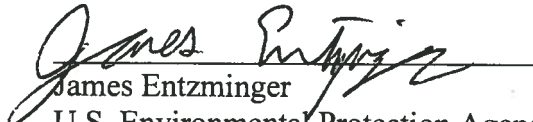
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Christopher R. Schraff
Attorney for Eurand, Inc.
Porter Wright Morris & Arthur, LLP
41 South High Street, Suites 2800-3200
Columbus, OH 43215-6194

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JUN 13 2011

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 13 day of June, 2011


James Entzminger
U.S. Environmental Protection Agency
Region 5