



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

DEC 12 2007

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:
SC-6J

Jerome Siegan, President
Chemsol Products Corporation
712 East 163rd Street
Cleveland, OH 44110

Re: Chemsol Products Corporation, Cleveland, Ohio, Consent Agreement and Final Order
Docket Nos. CERCLA-05-2008-0002 EPCRA-05-2008-0003 MM-05-2008-0001

Dear Mr. Siegan:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The United States Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on DEC 12 2007.

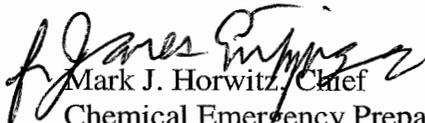
Please pay the civil penalty for the Comprehensive Environmental Response, Compensation, and Liability Act violation in the amount of \$10,153 in the manner prescribed in paragraph 47, and reference your check with the billing document number 2750830B003 and the docket number(s) CERCLA-05-2008-0002.

Please pay the civil penalty for the Emergency Planning and Community Right-to-Know Act violation in the amount of \$9,847 in the manner prescribed in paragraph 48, and reference your check with the billing document number 2750844E005 and the docket number(s) EPCRA-05-2008-0003.

Your payments are due on January 14, 2008 (30 days from the date of the filing of this CAFO).

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 Joseph Williams, Associate Regional Counsel, at (312) 886-6631. Thank you for your assistance in resolving this matter.

Sincerely yours,


Mark J. Horwitz, Chief

Chemical Emergency Preparedness
and Prevention Section

Enclosure

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

Joseph Williams (w/ enclosure)

Ms. Cindy DeWulf, Co-Chairperson (w/ enclosure)

Nancy Dragani, Co-Chairperson (w/ enclosure)

Jeff Beattie (w/ enclosure)

Mel House (w/ enclosure)

OH SERC

Marcy Toney

Regional Judicial Officer

Mary Davis (w/ enclosure)

Seeley, Savidge, Ebert & Gourash Co. LPA

26600 Detroit Road

Cleveland, OH 44145-2397 (certified)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

CERCLA-05-2008-0002
EPCRA-05-2008-0003
MM-05-2008-0001

In the Matter of:)
)
Chemsol Products Corporation)
Cleveland, Ohio 44110)
Respondent.)
_____)
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

RECEIVED
REGIONAL HEARING CLERK
U.S. EPA REGION 5
DEC 12 PM 3:31

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 Emergency Response Branch 1, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Chemsol Products Corporation, 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 hazardous substance's reportable quantity.

10. 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.

11. Section 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), 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 an extremely 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).

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 response commission (SERC) of any state likely to be affected by a release.

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 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, 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, and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

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 712 East 163rd Street, Cleveland, Ohio (the Facility).

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

19. Respondent's Facility consists of a building, a structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, placed, or otherwise come to be located.

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. Sulfuric acid (CAS #7664-93-9) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. Sulfuric acid (CAS #7664-93-9) has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

25. Sulfuric acid is listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

26. Sulfuric acid (CAS #7664-93-9) is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 10.1200(c).

27. At all times relevant to this CAFO, sulfuric acid was produced, used or stored at Respondent's facility.

28. 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).

29. Sulfuric acid (CAS #7664-93-9) has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

30. On October 10, 2006, at or about 10:20 a.m., a release occurred from Respondent's facility of approximately 7,133 pounds of sulfuric acid (the Release).

31. In a 24 hour time period, the Release of sulfuric acid exceeded the 1,000 pound reportable quantity.

32. During the Release, approximately 7,133 pounds of sulfuric acid spilled, leaked, pumped, poured, emitted, emptied, discharged, escaped, leached, dumped, or disposed into land surface or subsurface strata, or land.

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 October 10, 2006, at approximately 10:20 a.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 Cuyahoga County Ohio.

39. At all times relevant to this CAFO, the Cuyahoga County Local Emergency Planning Committee was the LEPC for Cleveland, Ohio under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

40. Respondent notified the NRC of the Release on October 14, 2006, at 10:30 a.m.

41. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the Release.

42. Respondent failure to immediately notify the NRC of the Release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

43. Respondent notified the LEPC of the Release on October 11, 2006, at 12:00 p.m.

44. Respondent did not immediately notify the LEPC after Respondent had knowledge of the Release.

45. 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).

Civil Penalty

46. The Enforcement Response Policy for EPCRA Section 304 and CERCLA Section 103 allows the Agency to mitigate the penalty by 25 percent when a company has been cooperative and returns to compliance, and by an additional 10 percent for a quick settlement. In consideration of Respondent's cooperation, willingness to quickly resolve this matter, and other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$20,000.

47. Within 30 days after the effective date of this CAFO, Respondent must pay a \$10,153 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

The check must note the following: Chemsol Products Corporation, the docket number of this CAFO CERCLA-05-2008-0002 and the billing document number 2750830B003.

48. Within 30 days after the effective date of this CAFO, Respondent must pay a \$9,847 civil penalty for the EPCRA violation. Respondent must pay the penalty by sending 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 note the following: Chemsol Products Corporation, the docket number of this CAFO EPCRA-05-2008-0003 and the billing document number 2750844E005.

49. 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 each payment. Respondent must send a copy of the checks and transmittal letters to:

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

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

Joseph Williams, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

51. 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.

52. 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

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

54. 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.

55. 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.

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

57. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 304 of EPCRA and Section 103 of CERCLA.

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

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

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

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

In the Matter of:

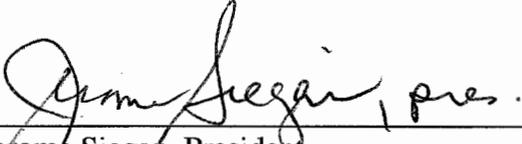
Chemsol Products Corporation, Cleveland, Ohio

MM-05-2008-0001

Docket No. CERCLA-05-2008-0002 EPCRA-05-2008-0003

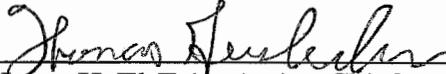
Chemsol Products Corporation, Respondent

11/13/07
Date

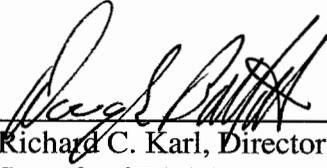

Jerome Siegan, President
Chemsol Products Corporation

U.S. Environmental Protection Agency, Complainant

12-04-07
Date


for Jason H. El-Zein, Acting Chief
Emergency Response Branch 1
Superfund Division

12/5/07
Date


for Richard C. Karl, Director
Superfund Division

In the Matter of:
Chemsol Products Corporation, Cleveland, Ohio

MM-05-2008-0001

Docket No. CERCLA-05-2008-0002 EPCRA-05-2008-0003

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.

12/12/2007
Date



Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency
Region 5

In the Matter of:

Chemsol Products Corporation, Cleveland, Ohio

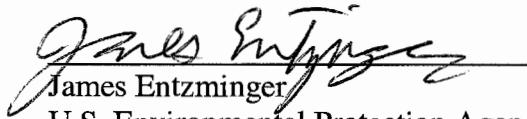
Docket No. CERCLA-05-2008-0002 EPCRA-05-2008-0003 MM-05-2008-0001

Certificate of Service

I, James Entzminger, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CERCLA-05-2008-0002 EPCRA-05-2008-0003 MM-05-2008-0001 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, via interoffice mail, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Chemsol Products Corporation by placing them in the custody of the United States Postal Service addressed as follows:

Jerome Siegen, President
Chemsol Products Corporation
712 East 163rd Street
Cleveland, OH 44110

on the 12 day of December, 2007


James Entzminger
U.S. Environmental Protection Agency
Region 5

2007 DEC 12 PM 3:31
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REGIONAL HEARING CLERK
US EPA REGION V