



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

DEC - 5 2017

REPLY TO THE ATTENTION OF:

ELECTRONIC SERVICE
VIA EMAIL

Mr. Daniel K. Dewitt
Attorney
Warner Norcross & Judd
900 Fifth Third Center
111 Lyon Street, N.W.
Grand Rapids, Michigan 49503-2487

Re: Pharmacia and Upjohn Company, LLC, Kalamazoo, Michigan, Consent Agreement and
Final Order, Docket Nos. MM-05-2018-0001 CERCLA-05-2018-0002 EPCRA-05-2018-0002

Dear Mr. Dewitt:

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 December 5, 2017.


Please have your client pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$11,390 in the manner prescribed in paragraph 52, and reference your check with the billing document number 2751830B001 and the docket number CERCLA-05-2018-0002.

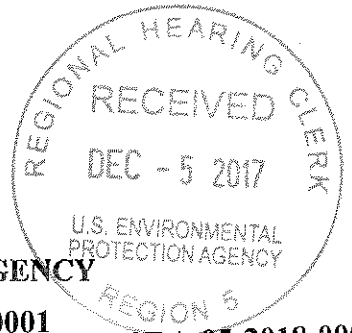
Please have your client pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$22,780 in the manner prescribed in paragraph 54, and reference your check with the docket number EPCRA-05-2018-0002.

Your payments are due on January 4, 2018.

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-05-2018-0001

EPCRA-05-2018-0002

In the Matter of:)	Docket Nos.
)	CERCLA-05-2018-0002
Pharmacia & Upjohn Company, LLC.)	Proceeding to Assess a Civil Penalty Under
Kalamazoo, 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 Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Pharmacia & Upjohn Company, LLC, a 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 any legal conclusions or 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. 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.

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, 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.

13. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

14. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

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), 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 \$54,789 per day of violation that occurred after November 2, 2015 and assessed on or after January 15, 2017.

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 7000 Portage Road, Kalamazoo, Michigan (facility).

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

20. Respondent's facility consists of a building, 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.

21. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

22. 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.

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

24. Methylene chloride (CAS #75-09-2) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Methylene chloride (CAS #75-09-2) has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

26. Methylene chloride is classified as a physical or health hazard, or hazard not otherwise classified.

27. Methylene chloride (CAS #75-09-2) 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, methylene chloride was produced, used or stored at Respondent's facility.

29. On April 11, 2016, at or around 9:50 am, a release of methylene chloride occurred from Respondent's facility of approximately 3,935 pounds of methylene chloride.

30. In a 24-hour time period, the release of methylene chloride exceeded 1,000 pounds (the release).

31. During the release, approximately 4,411 pounds of methylene chloride spilled, leaked, emitted, discharged, or escaped into the ambient air and/or air.

32. The release is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

33. The release is a "release" as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

34. Respondent had constructive knowledge that the release of methylene chloride from the facility was equal to or greater than the reportable quantity of methylene chloride on April 11, 2016, at approximately 9:50 am.

35. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

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

37. The release was likely to affect Michigan.

38. At all times relevant to this CAFO, the Michigan SERC was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

39. The release was likely to affect Kalamazoo County, Michigan.
40. At all times relevant to this CAFO, the Kalamazoo County LEPC was the LEPC for Kalamazoo County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).
41. Respondent notified the NRC of the release on April 14, 2016, at 11:12 a.m.
42. Respondent did not immediately notify the NRC as soon as Respondent had constructive knowledge of the release.
43. 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).
44. Respondent notified the Michigan SERC of the release on April 14, 2016, at 11:21 a.m.
45. Respondent did not immediately notify the SERC after Respondent had constructive knowledge of the release.
46. 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).
47. Respondent notified the LEPC of the release on April 14, at 11:27 a.m.
48. Respondent did not immediately notify the LEPC after Respondent had constructive knowledge of the release.
49. 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).
50. Respondent notified the NRC, SERC, and LEPC, under Section 103(a) of CERCLA, 42 U.S.C. 9603(a), and Section 304(a)(3)(A) of EPCRA, 42 U.S.C. 11004(a)(3)(A), on April 14, 2016, after testing the equipment and modeling emissions.

Civil Penalty

51. Complainant has determined that an appropriate civil penalty to settle this action is \$11,390 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).

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$11,390 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, by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," 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: Pharmacia and Upjohn Company, LLC, the docket number

of this CAFO and the billing document number _____.

53. Complainant has determined that an appropriate civil penalty to settle this action is \$22,780 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

54. Within 30 days after the effective date of this CAFO, Respondent must pay a \$22,780 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, by sending a cashier's or certified check, payable to "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-C2-GL
St. Louis, MO 63101

The check must note the following: Pharmacia and Upjohn Company, LLC, and the docket number of this CAFO _____.

55. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket numbers and the billing document number, if any, 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 60604-3511

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

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

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

57. 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.

58. 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

59. Consistent with the “Standing Order Authorizing E-Mail Service of Order and Other Documents Issued by the Regional Administrator or Regional Judicial Officer Under the Consolidated Rules,” dated March 27, 2015, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: carnovsky.tamara@epa.gov (for Complainant), and ddewitt@wnj.com (for Respondent). The parties waive their right to service by the methods specified in 40 C.F.R. § 22.6.

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

61. 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.

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

63. This CAFO is a “final order” for purposes of U.S. EPA’s EPCRA/CERCLA Enforcement Response Policy.

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

65. 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.

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

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

Pharmacia & Upjohn Company, LLC, Respondent

20 NOV 2017
Date

Robert J. Betzig
Robert J. Betzig
Site Leader
Pharmacia & Upjohn Company, LLC

U.S. Environmental Protection Agency, Complainant

11-27-17
Date

Jason El-Zein
Jason El-Zein, Chief
Enforcement Response Branch 1
U.S. Environmental Protection Agency
Region 5

Michael E. Huns
for JEZ

11.28.17
Date

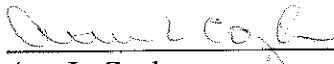
Jan Garada
for Margaret M. Guerriero, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Pharmacia & Upjohn Company, LLC, Kalamazoo, Michigan
Docket No. MM-05-2018-0001 CERCLA-05-2018-0002 EPCRA-05-2018-0002

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.

December 5, 2017
Date



Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on December 5, 2017 in the following manner to the addresses:

Copy by e-mail to

Attorney for the Respondent:

Daniel K. DeWitt
Warner Norcross & Judd
900 Fifth Third Center
111 Lyon St., NW
Grand Rapids, MI 49503-2487
ddewitt@wnj.com

Copy by e-mail to

Attorney for the Complainant:

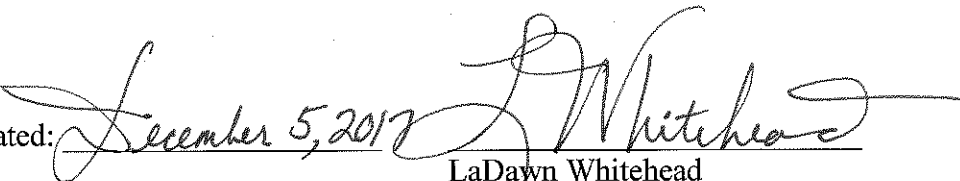
Tamara Carnovsky
carnovsky.tamara@epa.gov

Copy by e-mail to

Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated:

December 5, 2017 

LaDayn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5