



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

FEB 06 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Daniel McInery
Bose McKinney & Evans LLP
111 Monument Circle
Suite 2700
Indianapolis, Indiana 46204

Re: Ceres Solutions, LLP f/k/a Growers LLC d/b/a Growers Co-op, Vincennes, IN
Consent Agreement and Final Order – Docket Nos: **CERCLA-05-2009-0003**

EPCRA-05-2009-0011 MM-05-2009-0003

Dear Mr. McInery:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on **FEB 06 2009**.

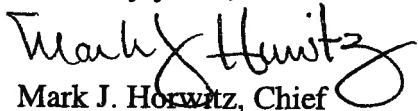
Please pay the CERCLA civil penalty in the amount of \$17,004 in the manner prescribed in paragraphs 58 and 60, and reference your check with the number BD ~~2750930B004~~ and docket numbers **CERCLA-05-2009-0003 MM-05-2009-0003**

Please pay the EPCRA civil penalty in the amount of \$48,516 in the manner prescribed in paragraphs 59 and 60 and reference your check with the number BD **2750944E012** and docket numbers **EPCRA-05-2009-0011 MM-05-2009-0003**.

Your payments are due on **MAR 06 2009**.

Please feel free to contact Ruth McNamara at (312) 353-3193 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 yours,



Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

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

Robert H. Smith (w/enclosure)
Office of Regional Counsel
U.S. EPA Region 5

Ian Ewusi-Wilson (w/enclosure)
IN SERC

Marcy Toney (w/enclosure)
Regional Judicial Officer

**bcc: Ruth McNamara
CEPPS**

FOIA

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FEB - 6 2009

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:

Ceres Solutions, LLP f/k/a
Growers LLC d/b/a Growers Co-op
3002 South Decker Road
Vincennes, Indiana

Respondent

) Docket Nos. EPCRA-05-2009-0011 22
) CERCLA 05-2009-0003 22
) MM-05-2009-0003 22
) 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(s) 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 Ceres Solutions, LLP f/k/a Growers LLC, d/b/a Growers Co-op, a corporation doing business in the State of Indiana.
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), 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.

10. 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).

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

12. 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).

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 3002 South Decker Road, Vincennes, Indiana (facility).

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

19. Respondent's facility consists of a building, structure, installation, equipment, pipe, storage container, motor vehicle, rolling stock, or any site or area where a hazardous substance has been deposited, stored, disposed of, or 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. 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).

24. Ammonia CAS# 7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

25. Ammonia CAS# 7664-41-7 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. Ammonia CAS# 7664-41-7 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).

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

28. Ammonia CAS# 7664-41-7 is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

29. Ammonia CAS# 7664-41-7 has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

30. On April 21, 2006, at or about 00:00 (midnight) Central Time, a release occurred from Respondent's facility of approximately 4,000 pounds of ammonia (the release).

31. In a 24 hour time period, the release of 4,000 pounds exceeded the 100 pound reportable quantity.

32. During the release, approximately 4,000 pounds spilled, leaked, emitted, emptied, discharged, escaped, or were disposed into the ambient 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 April 21, 2006, at approximately 00:39 a.m. Central 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 Indiana.

39. At all times relevant to this CAFO, the Indiana State Emergency Response Commission was the SERC for Indiana under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

40. The release was likely to affect Knox County Indiana.

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

42. Respondent notified the NRC of the release on April 21, 2006, at 7:39 a.m. Central Time.

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

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 Indiana SERC of release on April 21, 2006, at 7:48 a.m. Central Time.

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

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 notified the LEPC of the release on April 21, 2006, at 8:18 a.m. Central Time.

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

50. 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).

51. Respondent provided written follow-up emergency notice of the release to the SERC on May 3, 2006.

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

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

54. Respondent provided written follow-up emergency notice to the LEPC on May 3, 2006.

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

56. Respondent's failure to provide written follow-up emergency notice 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

57. The initial penalty calculation provided in U.S. EPA's October 1, 2008 Pre-Filing Notice Letter was \$129,738, based on 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 (ERP) (dated September 30, 1999). In consideration of Respondent's cooperation, willingness to quickly settle, and other matters as justice may require including their installation of fencing and

a camera, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$65,520. Out of this \$65,520 civil penalty, \$17,004 is allocated to the one CERCLA violation, and the remaining \$48,516 is allocated to the four EPCRA violations.

58. Within 30 days after the effective date of this CAFO, Respondent must pay a \$17,004 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:

[for checks sent by regular U.S. postal service]

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]

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: "In the matter of: Ceres Solutions, LLP f/k/a Growers LLC d/b/a Growers Co-op", docket numbers CERCLA 05-2009-0003 ²² EPCRA 05-2009-004 ² and MM-05-2009-0003 ²² and the billing document number 2750930.13004 ²²

[for electronic funds transfer]

Respondent must pay the penalty 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:

"In the matter of: Ceres Solutions, LLP f/k/a Growers LLC d/b/a Growers Co-op", docket
numbers PERCLA-05-2009-0003 ²² and MM-05-2009-0011 ²² and the
billing document number 2750930 B 004

59. Within 30 days after the effective date of this CAFO, Respondent must pay a
\$48,516 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a
cashier's or certified check, payable to the "Treasurer, United States of America," to:

[for checks sent by regular U.S. postal service]

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]

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: "In the matter of: Ceres Solutions, LLP f/k/a
Growers LLC d/b/a Growers Co-op", docket numbers

PERCLA-05-2009-0003 ²² EPCRA-05-2009-0011 ²² and MM-05-2009-0011 ²² and the billing
document number 2750944E 012 ²²

[for electronic funds transfer]

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:

"In the matter of: Ceres Solutions, LLP f/k/a Growers LLC d/b/a Growers Co-op", docket
numbers 18EPCA-05-2609-0003²⁰, 18EPCA-05-2009-0011²⁰ and MM-05-2009-0003²²
and the
billing document number 2750944E012²⁰.

60. A transmittal letter, stating Respondent's name, the case title, Respondent's
complete address, the case docket numbers and the billing document number must accompany
the payment. Respondent must send a copy of the check(s) and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

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

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

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

62. 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.

63. 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

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

65. 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 other violations of law.

66. 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.

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

68. This CAFO is a "final order" for purposes of U.S. EPA's ERP.

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

70. 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.

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

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

In the Matter of:

Ceres Solution, LLP f/k/a Growers LLC d/b/a Growers Co-op, Vincennes, Indiana
Docket Nos. CERCLA-05-2009-0003 EPCRA-05-2009-0011 MIM-05-2009-0003 ^{97.}

**Ceres Solution, LLP f/k/a Growers LLC d/b/a Growers Co-op, Vincennes, Indiana,
Respondent**

1-16-09
Date

Jeffrey T. Troike
Signature

Jeffrey T. Troike
Print Name

President & CEO
Title

U.S. Environmental Protection Agency, Complainant

1-26-09
Date

Jo - El - Zein
Jason El-Zein, Acting Chief
Emergency Response Branch 1
Superfund Division

1-29-09
Date

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

In the Matter of:

Ceres Solution, LLP f/k/a Growers LLC d/b/a Growers Co-op, Vincennes, Indiana

Docket Nos. CERCLA-05-2009-0003 EPCRA-05-2009-0011 MM-05-2009-0003 *et al.*

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.

1/29/09
Date

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

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FEB - 6 2009

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:

Ceres Solution, LLP f/k/a Growers LLC d/b/a Growers Co-op, Vincennes, Indiana

Docket Nos. CERCLA-05-2009-0003 ^{JK} EPCRA-05-2009-0011 ^{JK} MM-05-2009-0003 ^{JK}

Certificate of Service

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket numbers CERCLA-05-2009-0003, EPCRA-05-2009-0011 and MM-05-2009-0003 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Ceres Solution, LLP f/k/a Growers LLC d/b/a Growers Co-op's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Daniel McNerny
Bose McKinney & Evans LLP
111 Monument Circle
Suite 2700
Indianapolis, Indiana 46204

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FEB - 6 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 6th day of February 2009

Ruth McNamara

Ruth McNamara
U.S. Environmental Protection Agency
Region 5