



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

SEP 03 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Edward J. Polen
President
EMCO Chemical Distributors, Inc.
2100 Commonwealth Avenue
North Chicago, Illinois 60064-2725

Re: EMCO Chemical Distributors, Inc., North Chicago, Illinois Consent Agreement
and Final Order, Docket Nos. MM-05-2009-0006 CERCLA-05-2009-0009

EPCRA-05-2009-0028

Dear Mr. Polen:

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 SEP 03 2009.

Please pay the Comprehensive Environmental Response, Compensation, and Liability Act civil penalty in the amount of \$56,634.96 in the manner prescribed in paragraph 68, and reference your check with the billing document number 2750930B012 and the docket number CERCLA-05-2009-0009.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$26,026.21 in the manner prescribed in paragraph 69, and reference your check with the billing document number 2750944E030 and the docket number EPCRA-05-2009-0028.

Your payments are due on OCT 04 2009 [within 30 days of filing date].

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 Thomas Kenney, Associate Regional Counsel, at (312) 886-0708. Thank you for your assistance in resolving this matter.

Sincerely,



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

Enclosure

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

Thomas Kenney (w/ enclosure)
Office of Regional Counsel

Jon England, Legal Counsel (w/ enclosure)
Kathy Allen (w/ enclosure)
IL SERC

Marcy Toney
Regional Judicial Officer

Bruce White, Attorney (w/ enclosure)
Karaganis, White & Magel Ltd.
414 North Orleans Street, Suite 810
Chicago, IL 60610 (certified)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

MM-05-2009-0006

In the Matter of:

EMCO Chemical Distributors, Inc.
North Chicago, Illinois

Respondent
RECEIVED

SEP 03 2009

) Docket No. CERCLA-05-2009-0009
) EPCRA-05-2009-0028

) 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

REGIONAL HEARING CLERK Preliminary Statement
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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 EMCO Chemical Distributors, Inc., a corporation doing business in the State of Illinois.

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)(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).

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.

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, 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 from January 31, 1997 through March 15, 2004, to \$32,500 per day of violation for violations that occurred from 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 2100 Commonwealth Avenue, North Chicago, Illinois (facility).

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

20. Respondent’s facility consists of buildings, structures, equipment, 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. Trichloroethylene (CAS #79-01-6) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Trichloroethylene (CAS #79-01-6) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

26. At all times relevant to this CAFO, trichloroethylene was produced, used or stored at the facility.

27. On July 13, 2007, at or about 8:30 p.m., a release occurred from Respondent's facility of approximately 603 pounds of trichloroethylene (the trichloroethylene release).

28. In a 24 hour time period, the release of trichloroethylene exceeded 100 pounds.

29. During the trichloroethylene release, approximately 603 pounds spilled, leaked, emitted, or escaped into the ambient air.

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

31. Respondent had knowledge of the trichloroethylene release on July 13, 2007 at approximately 8:30 p.m.

32. Respondent notified the NRC of the trichloroethylene release on April 15, 2009, at 6:12 p.m.

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

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

35. Tert-butyl acetate (CAS #540-88-5) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

36. Tert-butyl acetate (CAS #540-88-5) has a reportable quantity of 5,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

37. At all times relevant to this CAFO, tert-butyl acetate was produced, used or stored at the facility.

38. Tert-butyl acetate (CAS #540-88-5) 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.

39. Tert-butyl acetate (CAS #540-88-5) 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).

40. On August 24, 2007, at or about 9:00 p.m., a release occurred from Respondent’s facility of approximately 5,224 pounds of tert-butyl acetate (the tert-butyl acetate release).

41. In a 24 hour time period, the release of tert-butyl acetate exceeded 5,000 pounds.

42. During the tert-butyl acetate release, approximately 5,224 pounds spilled, leaked, poured, emptied, discharged, or escaped into the navigable waters, waters of the contiguous zone, surface water, drinking water supply, or ambient air and/or air or water.

43. The tert-butyl acetate release is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

44. Respondent had knowledge of the tert-butyl acetate release on August 24, 2007, at approximately 9:00 p.m.

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

46. Respondent notified the NRC of the tert-butyl acetate release on April 15, 2009, at 6:46 p.m.

47. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the tert-butyl acetate release.

48. Respondent’s failure to immediately notify the NRC of the tert-butyl acetate release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

49. The tert butyl acetate release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

50. The tert-butyl acetate release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

51. The tert-butyl acetate release was likely to affect Illinois.

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

53. Respondent notified the Illinois SERC of tert-butyl acetate release on August 25, 2007, at 12:40 p.m.

54. Respondent did not immediately notify the Illinois SERC after Respondent had knowledge of the tert-butyl acetate release.

55. Respondent’s failure to immediately notify the Illinois SERC of the tert-butyl acetate release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

56. Respondent provided written follow-up emergency notice of the tert-butyl acetate release to the Illinois SERC on September 4, 2007.

57. Respondent did not provide the Illinois SERC written follow-up emergency notice of the tert-butyl acetate release as soon as practicable after the tert butyl acetate release occurred.

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

59. The tert-butyl acetate release was likely to affect Lake County, Illinois.

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

61. As of November 29, 2007, Respondent had not notified the Lake County, Illinois LEPC of the tert-butyl acetate release.

62. Respondent did not immediately notify the Lake County, Illinois LEPC after Respondent had knowledge of the tert-butyl acetate release.

63. Respondent's failure to immediately notify the Lake County, Illinois LEPC of the tert-butyl acetate release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

64. As of November 29, 2007, Respondent had not provided the written follow-up emergency notice of the tert-butyl acetate release to the Lake County, Illinois LEPC.

65. Respondent did not provide the Lake County, Illinois LEPC with written follow-up emergency notice of the tert-butyl acetate release as soon as practicable after the tert-butyl acetate release occurred.

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

Civil Penalty

67. In consideration of Respondent's cooperation, return to compliance, willingness to quickly settle this matter, and other matters as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$82,661.17.

68. Within 30 days after the effective date of this CAFO, Respondent must pay a \$56,634.96 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 EMCO chemical Distributors, Inc., the docket number of this CAFO and the billing document number 2750930B012

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 EMCO Chemical Distributors, Inc., the docket number of this CAFO and the billing document number 2750930B012.

69. Within 30 days after the effective date of this CAFO, Respondent must pay a \$26,026.21 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 EMCO Chemical Distributors, Inc., the docket number of this CAFO and the billing document number 2750944E030.

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 EMCO Chemical Distributors, Inc., the docket number of this CAFO and the billing document number 2750944E030.

for online payments using debit or credit card

Respondent must pay online using ACH debit or credit card. For payments online using ACH debit or credit card please visit www.pay.gov. Using the Search Public Forms option on the tool bar (left side of page), enter SFO 1.1 in the search field. Open the form and complete the information requested.

70. 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-19J)
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

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

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

72. 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.

73. 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

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

75. 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.

76. 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.

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

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

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

80. 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.


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

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

In the Matter of:
EMCO Chemical Distributors, Inc., North Chicago, Illinois
Docket Nos.

EMCO Chemical Distributors, Inc., Respondent

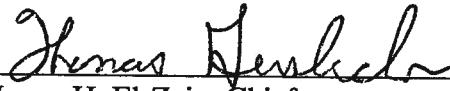
8/21/09
Date



Edward J. Polen, President
EMCO Chemical Distributors, Inc.

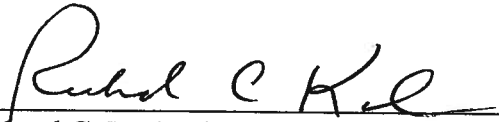
U.S. Environmental Protection Agency, Complainant

9-1-09
Date



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

9-1-09
Date



Richard C. Karl, Director
Superfund Division

In the Matter of:
EMCO Chemical Distributors, Inc., North Chicago, Illinois
Docket Nos. MM-05-2009-0006
CERCLA-05-2009-0009

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EPCRA-05-2009-0028 Final Order

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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.

9/2/09
Date

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

In the Matter of:

EMCO Chemical Distributors, Inc., North Chicago, Illinois

Docket Nos. MM-05-2009-0006 CERCLA-05-2009-0009 EPCRA-05-2009-0028

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

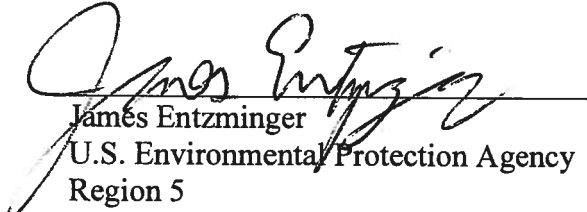
Certificate of Service

I, James Entzminger, certify that I hand delivered the original and one copy of the Consent Agreement and Final Order, 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 EMCO Chemical Distributor, Inc. and their Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Edward J. Polen, President
EMCO Chemical Distributors, Inc.
2100 Commonwealth Avenue
North Chicago, IL 60064-2725

Bruce White, Attorney
Karaganis, White & Magel Ltd.
414 North Orleans Street, Suite 810
Chicago, IL 60610

on the 3 day of September, 2009


James Entzminger
U.S. Environmental Protection Agency
Region 5