



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

MAR 06 2014

Reply to the Attention Of:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Anup Ruia
General Manager
Valmont Coatings – Empire Galvanizing
10909 Franklin Avenue
Franklin Park, IL 60131

MM-05-2014-0001

EPCRA-05-2014-0010

Re: Valmont Coatings-Empire Galvanizing, Franklin Park, IL CERCLA-05-2014-0005
Consent Agreement and Final Order

BDF

2751430B005

Dear Mr. Ruia:

Enclosed please find a final, fully-executed original Consent Agreement and Final Order (CAFO) that memorializes the settlement between EPA and your client, Valmont Coatings-Empire Galvanizing (Valmont) regarding your client's alleged violations.

If you have any questions or comments regarding this CAFO, please feel free to contact Associate Regional Counsel, Cynthia N. Kawakami at (312) 886-0564 or kawakami.cynthia@epa.gov.

Sincerely,

Michael E. Hans, Chief
Chemical Emergency Preparedness
And Prevention Section

Enclosure

cc: J. Barton Seitz
Baker Botts LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2400

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. For purposes of this proceeding, Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations, alleged violations and conclusions of law set forth 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 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 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. 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 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).

15. 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.

16. 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. § 370, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

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

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

19. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 10909 Franklin Avenue, Franklin Park, Illinois 60131 (facility).

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

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

24. 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).

25. 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.

26. Sulfuric acid, CAS #7664-93-9, is classified as a physical or health hazard.

27. 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).

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

29. Sulfuric acid, CAS #7664-93-9, is an "extremely hazardous substance" as that term is defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3).

30. Sulfuric acid, CAS #7664-93-9, an extremely hazardous substance, has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

31. On May 25, 2012, at or about 6:30 a.m., approximately 1,921 pounds of sulfuric acid were released from Respondent's facility (the release). Respondent did not have knowledge that the amount released exceeded the reportable quantity for sulfuric acid until between 8:00 a.m. and 8:40 a.m.

32. In a 24 hour time period, the release of sulfuric acid exceeded 1,000 pounds.

33. During the release, approximately 1,921 pounds of acid were assumed to have been spilled or leaked onto the ground.

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

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

36. Respondent had knowledge of the release on May 25, 2012 at approximately 7:15 a.m., but Respondent did not have knowledge that the amount released exceeded the reportable quantity for sulfuric acid until between 8:00 a.m. and 8:40 a.m., when Respondent made the assumption that the substance released consisted of 93% sulfuric acid.

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

38. Respondent notified the NRC of the release on May 25, 2012, at 9:36 a.m.

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

40. 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).

41. The release was one for which notice to the SERC was required under Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b).

42. The release was likely to affect Illinois.

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

44. Respondent notified the SERC of the release on May 25, 2012, at 8:24 a.m.

45. Respondent did not immediately notify the SERC after Respondent had 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. The release was one for which notice to the LEPC was required under Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b).

48. The release was likely to affect Cook County.

49. At all times relevant to this CAFO, the Suburban Cook County LEPC was the LEPC for Cook County under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

50. Respondent notified the LEPC of the release on May 25, 2012, at 10:00 a.m.

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

51. 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).

52. The release was one for which written follow-up emergency notice to the SERC was required under Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b), as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a). Under Illinois SERC guidance, the SERC advises that such notices be submitted within 30 days of the release, which in this case would have been June 24, 2012.

53. Respondent provided a written follow-up emergency notice of the release to the SERC on July 5, 2012.

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

55. Respondent's failure to provide a 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).

56. The release was one for which written follow-up emergency notice to the LEPC was required under Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b), as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a). Under the Illinois SERC guidance, which is allegedly relied on by the LEPC, such notices are to be submitted within 30 days of release, which in this case would have been June 24, 2012.

57. Respondent provided written follow-up emergency notice to the LEPC on July 5, 2012.

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

59. 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

60. Complainant has determined that an appropriate civil penalty to settle this action is \$5,000 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).

61. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,000 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

or, if using 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: In the Matter of Valmont Coatings-Empire Galvanizing, the CERCLA docket number of this CAFO CERCLA-05-2014-0005 and the billing document number

2751430 B005

62. Complainant has determined that an appropriate civil penalty to settle this action is \$16,700 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.

63. Within 30 days after the effective date of this CAFO, Respondent must pay a \$16,700 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

or, if using 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: In the Matter of Valmont Coatings-Empire Galvanizing, and the EPCRA docket number of this CAFO EPCRA-05-2014-0010

64. 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 the payment. Respondent must send a copy of the checks and transmittal letter to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

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

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

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

66. 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.

67. 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.

68. Respondent's obligations for payment of civil penalties under this CAFO shall end when Respondent has paid the civil penalties specified hereunder in accordance with paragraphs 60-67.

General Provisions

69. The terms of this CAFO constitute a full and final settlement of all federal civil and administrative penalties arising from or relating to the facts and violations alleged in this CAFO.

70. 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.

71. 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.

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

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

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


75. 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.

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

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


In the Matter of: Valmont Coatings-Empire Galvanizing, Respondent
Docket No.:

1/29/2014
Date



Anup S. Ruia
General Manager
Valmont Coatings-Empire Galvanizing

U.S. Environmental Protection Agency, Complainant

2/27/14
Date


Sharon Jaffess, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

2/27/2014
Date


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

MM-05-2014-0001

In the Matter of: Valmont Coatings-Empire Galvanizing

Docket No.:

CERCLA-05-2014-0005

EPCRA-05-2014-0010

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.

3/3/2014

Date



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



MM-05-2014-0001

In the Matter of: Valmont Coatings – Empire Galvanizing
Docket No. CERCLA-05-2014-0005 EPCRA-05-2014-0010

Certificate of Service

I, Jarrah P. Sanders, 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:

Anup Ruia
General Manager
Valmont Coatings - Empire Galvanizing
10909 Franklin Avenue
Franklin park, IL 60131

A copy of the CAFO was mailed by first-class, prepaid postage, U.S. Mail to Respondent's counsel by placing it in the custody of the United States Postal Service addressed as follows:

J. Barton Seitz
Baker Botts LLP
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2400

on the 6th day of March, 2014



A handwritten signature in black ink, appearing to read "J.P. Sanders", written over a horizontal line.

Jarrah P. Sanders
U.S. Environmental Protection Agency
Region 5