



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

JUN 26 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Elizabeth A. South, General Counsel
Co-Alliance, L.L.P.
5250 East US Highway 36, Building 1000
Avon, IN 46123

Re: Co-Alliance, L.L.P., Chillicothe, Ohio, Consent Agreement and Final Order
Docket No. CERCLA-05-2009-0008

Dear Ms. South:

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 original CAFO with the Regional Hearing Clerk on JUN 26 2009.

Please pay the civil penalty in the amount of \$15,716.35 in the manner prescribed in paragraph 28, and reference your check with the billing document number 2750930B010 and the docket number CERCLA-05-2009-0008.

Your payment is due on JUL 27 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 Charles V. Mikalian, Associate Regional Counsel, at 312-886-2242. Thank you for your assistance in resolving this matter.

Sincerely yours,

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

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)
)
Co-Alliance, L.L.P.)
Chillicothe, Ohio)
Respondent.)
_____)

Docket No. CERCLA-05-2009-0008
Proceeding to Assess a Civil Penalty Under
Section 109(b) of the Comprehensive
Environmental Response, Compensation
and Liability Act

RECEIVED
JUN 26 2009

Consent Agreement and Final Order
Preliminary Statement

REGIONAL HEARING CLERK
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), 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 Chemical Emergency Preparedness and Prevention Section, Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency ("EPA"), Region 5.

3. Respondent is Co-Alliance, L.L.P., an Indiana limited liability partnership 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), provides a mechanism to alert federal 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 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. 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, 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 Violation

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

13. At all times relevant to this CAFO, Respondent was in charge of the facility located at 331 South Watt Street, Chillicothe, Ohio (“Facility”).

14. Respondent’s Facility consists of a building, structure, installation, equipment, storage container, rolling stock, or any site or area where a hazardous substance has been stored, placed, or otherwise come to be located.

15. Respondent’s Facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Anhydrous 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).

17. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On May 25, 2007, at or about 2:00 a.m., a release occurred from Respondent’s Facility of approximately 830 pounds of anhydrous ammonia (the “Release”).

19. In a 24 hour time period, the Release of anhydrous ammonia exceeded 100 pounds.

20. During the Release, approximately 830 pounds of anhydrous ammonia spilled, leaked, poured, emitted, emptied, discharged, or escape into the land surface or subsurface strata, or ambient air.

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

22. Respondent had knowledge of the Release on May 25, 2007, at approximately 2:30 a.m.

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

24. Respondent notified the NRC of the Release on May 25, 2007, at 7:52 a.m.

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

26. 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).

Civil Penalty

27. In consideration of Respondent’s cooperation and willingness to quickly resolve this matter, EPA has determined that an appropriate civil penalty to settle this action is \$15,716.35.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,716.35 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: Co-Alliance, L.L.P., the docket number of this CAFO and the billing document number 2750930B010.

for electronic funds transfer

Respondent may 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: Co-Alliance, L.L.P., the docket number of this CAFO and the billing document number

2750930B010

29. 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 the payment. Respondent must send a copy of the check and transmittal letter to:

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

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

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

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

31. If Respondent does not timely pay the civil penalty, 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.

32. 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, EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

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

34. This CAFO does not affect the right of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

35. Respondent certifies that it is complying with Section 103(a) of CERCLA.

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

37. This CAFO is a "final order" for purposes of EPA's Enforcement Response Policy for Section 103 of CERCLA.

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

39. Each person signing this CAFO 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.

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

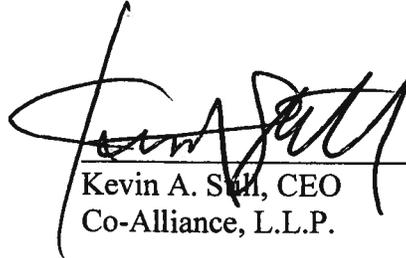
41. This CAFO constitutes the entire agreement between the parties.

In the Matter of:
Co-Alliance, L.L.P., Chillicothe, Ohio
Docket No. _____

Co-Alliance, L.L.P., Respondent

JUN 12 2009

Date

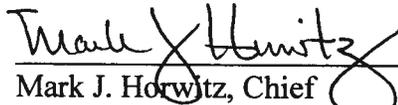


Kevin A. Sull, CEO
Co-Alliance, L.L.P.

U.S. Environmental Protection Agency, Complainant

June 19, 2009

Date



Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section
Emergency Response Branch 1
Superfund Division

6/23/09

Date



fr Richard C. Karl, Director
Superfund Division

In the Matter of:
Co-Alliance, L.L.P., Chillicothe, Ohio
Docket No. CERCLA-05-2009-0008

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.

6/25/09
Date

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

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Co-Alliance, L.L.P., Chillicothe, Ohio
Docket No. CERCLA-05-2009-0008

Certificate of Service

I, James Entzminger, certify that I hand delivered the original of the Consent Agreement and Final Order and one copy 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 Co-Alliance, L.L.P.'s Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Elizabeth A. South
General Counsel
Co-Alliance, L.L.P.
5250 East US Highway 36, Building 1000
Avon, IN 46123

on the 26 day of June, 2009



James Entzminger
U.S. Environmental Protection Agency
Region 5

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JUN 26 2009

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**