



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

JUN 25 2009

FEDERAL EXPRESS

Nancy Lake Martin
BASF Catalysts, LLC
100 Campus Drive
Florham Park, New Jersey 07932

SUBJ: Consent Agreement and Final Order
BASF Catalysts, LLC.
EPCRA-04-2009-2001(b)

Dear Ms. Lake Martin:

Enclosed please find a copy of the Consent Agreement and Final Order (CAFO) resulting from settlement discussions with BASF Catalysts, LLC., and its alleged violations of Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11023.

Please have the CAFO signed where indicated and return it within 15 calendar days of receipt of this letter to:

Erika L. White
EPCRA Enforcement Section
Air, Pesticides and Toxics Management Division
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Upon receipt of the signed CAFO, the document will be forwarded to the Regional Judicial Officer for approval, then filed with the Regional Hearing Clerk. A copy of the filed document will then be forwarded to you.

If you have any questions, please contact Mr. Adam Dilts at (404) 562-9581.

Sincerely,

A handwritten signature in black ink, appearing to read "Caron B. Falconer".

Caron B. Falconer
Chief, EPCRA Enforcement Section

Enclosure

IN THE MATTER OF:)
)
BASF Catalysts, LLC)
)
Respondent.)
_____)

EPCRA-04-2009-2001(b)

APR 14 2009
EPA REGION 4
ATLANTA, GA

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 325 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11045, and pursuant to the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is BASF Catalysts, LLC.

2. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. § 22.18(b), this Consent Agreement and Final Order (CAFO) will conclude this matter.

II. Preliminary Statements

3. The authority to take action under Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under EPCRA to the Regional Administrators by EPA Delegation 22-3-A, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated this authority to the Director, Air, Pesticides and Toxics Management Division, by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to that delegation, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

4. Respondent is BASF Catalysts, LLC, a limited liability company authorized to do business in the State of Georgia.

5. Respondent is a "person" as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

6. Respondent owns and operates a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

7. Respondent's facility is located at 1800 East President Street, Savannah, Chatham County, Georgia 31404 (Savannah Facility).

8. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30, require the owner or operator of a facility that (a) has 10 or more full-time employees; (b) is in a Standard Industrial Classification (SIC) major group or industry listed in 40 C.F.R. § 372.23(a) (for which the corresponding North American Industry Classification System subsector and industry codes are listed in 40 C.F.R. §§ 372.23(b) and 372.23(c)); and (c) manufactured, processed, or otherwise used a toxic chemical listed in Section 313(c) and 40 C.F.R. § 372.65, in excess of an applicable threshold quantity established under EPCRA Section 313(f) and set forth in 40 C.F.R. § 372.25, during the calendar year, to complete and submit a toxic chemical release inventory reporting Form R (EPA Form 9350-1) or Form A (EPA Form 9350-2) to the Administrator of EPA and to the State in which the facility is located, by July 1 for the preceding calendar year for each toxic chemical known by the owner or operator to be manufactured, processed, or otherwise used in quantities exceeding the established threshold quantity during the preceding calendar year.

9. As set forth at EPCRA Section 313(f) and 40 C.F.R. § 372.25, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds per calendar year. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds.

10. Respondent has 10 or more full-time employees, as defined at 40 C.F.R. § 372.3, at its facility.

11. Respondent's facility is classified within SIC codes 20 through 39.

12. Respondent's facility is classified in a covered SIC code as described at 40 C.F.R. § 372.22 and in a covered NAICS code as described at 40 C.F.R. § 372.23.

13. Nitric acid is a toxic chemical listed under EPCRA Section 313(c), 42 U.S.C. § 11023(c), and 40 C.F.R. § 372.65.

14. Respondent's facility processed or otherwise used nitric acid in excess of the 25,000/10,000 pound threshold quantity established under EPCRA Section 313(f), 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, during calendar years 2003, 2004 and 2005.

15. Respondent failed to submit a Form R or Form A Report for nitric acid to the Administrator of EPA and to the official designated by the Governor of the State of Georgia by July 1 following each reporting year.

16. Respondent disclosed its failure to submit a Form A for nitric acid to EPA under its "Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations" (Audit Policy). EPA concluded that Respondent failed to qualify for relief under the Audit Policy because it did not satisfy condition D(4) of the Policy.

17. Respondent violated the reporting requirements of Section 313 of EPCRA, 42 U.S.C. § 11023, at its facility for calendar years 2003, 2004 and 2005, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

18. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and 40 C.F.R. Part 19, EPA may assess a civil penalty of not more than \$32,500 for each violation of Section 313 that occurred after March 15, 2004 but before January 12, 2009. Each day a violation of Section 313 continues constitutes a separate violation. Civil penalties under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), may be assessed by an Administrative Order.

III. Consent Agreement

19. For the purposes of this CAFO, Respondent admits the jurisdictional and factual allegations set out above.

20. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

21. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

22. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA at the facility.

23. Compliance with this CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for a violation of any federal or state statute, regulation or permit; to initiate an action for imminent and substantial endangerment; or to pursue criminal enforcement.

24. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public's interest and that this CAFO is consistent with the applicable requirements of EPCRA.

IV. Final Order

25. Respondent shall pay a civil penalty of THIRTY-SIX THOUSAND ONE HUNDRED NINETY DOLLARS (\$36,190), for the violations alleged in Section II. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

26. Respondent shall pay the penalty by forwarding a cashier's or certified check, payable to: "Treasurer, United States of America," to the following address:

BY MAIL

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000

BY OVERNIGHT

U.S. Bank
Attention: Natalie Pearson
1005 Convention Plaza
Mail Station SL-MO-C2GL
St. Louis, Missouri 63101

The check shall reference on its face the name and Docket Number EPCRA-04-2009-2001(b).

27. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Erika L. White
U.S. EPA, Region 4
Air, Pesticides & Toxics Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

28. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the date of entry of the CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

29. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

30. This CAFO shall be binding upon the Respondent, its successors and assigns.

31. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides & Toxic Management Division
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8451

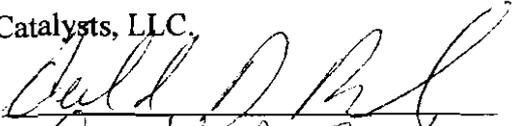
32. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

V. Effective Date

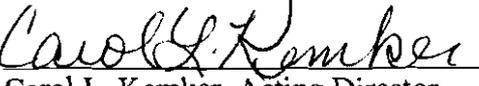
33. The effective date of this CAFO shall be the date upon which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

BASF Catalysts, LLC.

By:  Date: 6/22/09
Name: Gerald D. Burch (Typed or Printed)
Title: Site Manager (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 6/25/09
Carol L. Kemker, Acting Director
Air, Pesticides & Toxics
Management Division
Region 4

APPROVED AND SO ORDERED this 25th day of June 2009.


Susan B. Schub
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that on the date shown a true and correct copy of the foregoing

Consent Agreement and Final Order, In the Matter of: BASF Catalysts, LLC

Docket No. EPCRA-04-2009-2001(b)^{3,9.} was filed and served to the parties listed below in the manner indicated:

Caron B. Falconer
U.S. EPA, Region 4
Air, Pesticides, and Toxics
Management Division
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

Adam Dilts
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth St., SW
Atlanta, GA 30303

(Via EPA's internal mail)

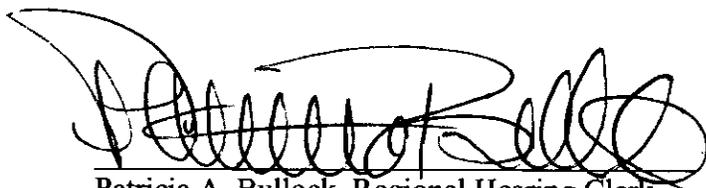
BASF Catalysts, LLC
c/o CT Corporation System
1201 Peachtree St., Ne
Atlanta, GA 30361

(Via Certified Mail, Return Receipt Requested)

Nancy Lake Martin
BASF Catalysts, LLC
100 Campus Dr.
Floraham Park, NJ 07932

(first class mail)

Date: 6-25-09



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511

EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM

TO BE COMPLETED BY THE ORIGINATING OFFICE:

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 6/25/09
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504
(Office) (Telephone Number)

- | | |
|--|--|
| <input type="checkbox"/> Non-SF Judicial Order/Consent Decree
USAO COLLECTS | <input checked="" type="checkbox"/> Administrative Order/Consent Agreement
FMO COLLECTS PAYMENT |
| <input type="checkbox"/> SF Judicial Order/Consent Decree
DOJ COLLECTS | <input type="checkbox"/> Oversight Billing - Cost Package required:
Sent with bill |
| <input type="checkbox"/> Other Receivable | <input type="checkbox"/> Not sent with bill |
| <input type="checkbox"/> This is an original debt | <input type="checkbox"/> Oversight Billing - Cost Package not required |
| | <input type="checkbox"/> This is a modification |

PAYEE: BASF Catalysts LLC
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 36,190
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: EPORA 04 2009 2001 (6)

The Site Specific Superfund Account Number: _____

The Designated Regional/Headquarters Program Office: _____

The IFMS Accounts Receivable Control Number is: _____ Date _____

If you have any questions, please call: _____ of the Financial Management Section at: _____

DISTRIBUTION:

- A. **JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the **FINAL JUDICIAL ORDER** should be mailed to:
- | | |
|--|---|
| 1. Debt Tracking Officer
Environmental Enforcement Section
Department of Justice RM 1647
P.O. Box 7611, Benjamin Franklin Station
Washington, D.C. 20044 | 2. Originating Office (EAD)
3. Designated Program Office |
|--|---|
- B. **ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:
- | | |
|--|---|
| 1. Originating Office
2. Regional Hearing Clerk | 3. Designated Program Office
4. Regional Counsel (EAD) |
|--|---|