



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

In the Matter of:	)	US EPA Docket No.: EPCRA-03-2017-0002
	)	
	)	
ICL-IP America, Inc.	)	
622 Emerson Road, Suite 500	)	
St. Louis, MO 63141-6742,	)	
	)	
Respondent.	)	Proceedings Pursuant to Sections 304
	)	and 325 of the Emergency Planning and
	)	Community Right-to-Know Act,
ICL-IP America, Inc.	)	42 U.S.C. §§ 11004 and 11045
11636 Huntington Road	)	
Gallipolis Ferry, WV 25515,	)	
	)	
Facility.	)	
	)	

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**CONSENT AGREEMENT**

**STATUTORY AUTHORITY**

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045. The President has delegated this authority to the Administrator of the U.S. Environmental Protection Agency ("EPA"), who has, in turn, delegated it to the Regional Administrator of EPA, Region III. The Regional Administrator has re-delegated this authority to the Director of the Hazardous Site Cleanup Division, EPA Region III ("Complainant"). Further, this Consent Agreement is proposed and entered into under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/ Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22.

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CAFO") as prescribed by the Consolidated Rules of Practice, pursuant to 40 C.F.R. § 22.13(b), 22.18(b)(2) and (3), and 22.1(a)(8), and having consented to the entry of this CAFO, agree to comply with the terms of this CAFO.



**JURISDICTION**

1. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(8).
2. The Regional Judicial Officer has the authority to approve this settlement and conclude this proceeding pursuant to 40 C.F.R. § 22.4(b) and 22.18(b)(3).
3. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations in this Consent Agreement and agrees not to contest EPA’s jurisdiction with respect to the execution of this Consent Agreement or the Final Order, or enforcement of this CAFO.
4. For the purpose of this proceeding, and with the exception of Paragraph 3, above, Respondent neither admits nor denies the following factual allegations and conclusions of law, but expressly waives its rights to contest said allegations.

**FACTUAL ALLEGATIONS**

5. ICL-IP America, Inc. (“Respondent”) is a Delaware corporation with its headquarters located at 622 Emerson Road, Suite 500, St. Louis, MO 63141-6742.
6. Respondent is a “person” as defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 355.61.
7. Respondent is the owner and operator of a facility located at 11636 Huntington Road, Gallipolis Ferry, WV 25515 (“the Facility”), which is utilized for the Respondent’s fire retardant manufacturing business.
8. The Facility is a “facility” as defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 355.61.
9. At all times relevant to this CAFO, Respondent has been the “owner or operator” of the Facility within the meaning of Section 304 of EPCRA, 42 U.S.C. § 11004, and 40 C.F.R. § 355.2 and 40 C.F.R. § 370.2.
10. On April 7, 2015, EPA conducted an inspection of the Facility to ascertain Respondent’s compliance with the notification requirements of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”), 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004, and the emergency planning and community right-to-know requirements of Sections 302, 303, 311 and 312 of EPCRA, 42 U.S.C. §§ 11002, 11003, 11021, 11022 (“the Inspection”) following a release of ethylene oxide at the Facility on August 29, 2014 and August 30, 2014. During the Inspection, Respondent submitted information to EPA regarding its compliance with CERCLA and EPCRA.

**COUNT I**  
**FINDING OF FACT RELATING TO THE**  
**VIOLATION OF SECTION 304(a) and (b) of EPCRA**

11. The findings of fact contained in Paragraphs 5 through 10 of this CAFO are incorporated by reference herein as though fully set forth at length.

12. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances (“EHSs”) and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a) through (c) of EPCRA, 42 U.S.C. § 11004(a) through (c) (“Reportable Quantity” or “RQ”). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.

13. Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, the owner or operator of a facility to immediately notify the Local Emergency Planning Committee (“LEPC”) as soon as he/she has knowledge of a release of an EHS from the facility in a quantity equal to or exceeding the RQ.

14. The LEPC for the Facility is, and at all times relevant to this CAFO has been, the Mason County Local Emergency Planning Committee.

15. Ethylene oxide, Chemical Abstracts Service (“CAS”) Registry No. 75-21-8, is an EHS as defined under Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), and 40 C.F.R. § 355.61, with an RQ of 10 pounds, as listed in 40 C.F.R. Part 355, Appendices A and B.

16. According to information provided during and after the Inspection, an estimated 12.78 pounds of ethylene oxide were released from the Facility commencing during late night on August 29, 2014 and ending before 1:00 a.m. on August 30, 2014 (“the Release”).

17. Based upon the Respondent’s statements during the Inspection and supporting documentation provided regarding the Release, the following events occurred:

a. The Release began at approximately 11:51 p.m. on August 29, 2014, after an ICL-IP operator transferred a production batch of Fyrol PXN between Reactor-12 and Reactor-35 as part of the Triethyl Phosphate (“TEP”) removal process, without first completing the step to remove excess ethylene oxide. As a result, the excess ethylene oxide was released to the atmosphere through stack OJ-39.

b. The Release terminated at approximately 12:51 a.m. on August 30, 2014 when all of the excess ethylene oxide was released to the environment.

c. By 3:08 p.m. on Monday, September 2, 2014, an ICL-IP process engineer had reviewed the previous weekend’s production activities and ascertained that a release of ethylene oxide occurred at the Facility on August 29, 2014.

d. At 3:08 p.m. on September 2, 2014, Respondent verbally notified the State Emergency Response Commission (“SERC”) that an indeterminate amount of ethylene oxide had been released to the atmosphere on August 29-30, 2014, with a worst case scenario of 200 pounds but likely a much smaller quantity. At 3:22 p.m., Respondent similarly notified the National Response Center (“NRC”) of the Release.

e. On or about 1:49 p.m. on September 3, 2014, Respondent completed calculations and determined that 12.78 pounds of ethylene oxide were released to the atmosphere during the August 29, 2014 release.

f. On September 10, 2014, Respondent submitted a written follow-up report to the SERC indicating that calculations had been completed and that an estimated 12.78 pounds of ethylene oxide had been released during the August 29, 2014 release.

18. The Release required immediate notification to the LEPC pursuant to Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), and 40 C.F.R. Part 355, Subpart C.

19. Respondent did not notify the LEPC of the Release.

20. Respondent failed to immediately notify the LEPC of the Release as soon as Respondent knew or should have known that a release of an EHS had occurred from the Facility in an amount equal to or exceeding the applicable RQ, as required by Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b), and 40 C.F.R. Part 355, Subpart C.

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 304(a) AND (b) OF EPCRA**

21. Respondent’s failure to immediately notify the LEPC of the Release is a violation of Section 304(a)(1) and (b) of EPCRA, 42 U.S.C. § 11004(a)(1) and (b). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

**COUNT II  
FINDINGS OF FACT RELATING TO THE  
VIOLATION OF SECTION 304(c) OF EPCRA**

22. The findings of fact contained in Paragraphs 5 through 21 of this CAFO are incorporated by reference herein as though fully set forth at length.

23. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, that, when there has been a release of an EHS in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, and the release requires immediate notification pursuant to Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide a written follow-up emergency notice regarding the release to the LEPC as soon as practicable.

24. The Release constitutes a release of an EHS in a quantity equal to or exceeding its RQ from a facility at which hazardous chemicals are produced, used, or stored, which required immediate notification pursuant to Section 304(a) of EPCRA, 42 U.S.C. § 11004(a). Consequently, the owner or operator was required to provide a written follow-up emergency notice to the LEPC as soon as practicable, pursuant to Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), and 40 C.F.R. Part 355, Subpart C.

25. Respondent did not provide a written follow-up report regarding the Release to the LEPC, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C.

**CONCLUSION OF LAW RELATED TO THE VIOLATION OF SECTION 304(c) OF EPCRA**

26. Respondent's failure to submit a follow-up report to the LEPC for the Release is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Respondent is, therefore, subject to the assessment of penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b).

**SETTLEMENT**

27. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, Respondent consents to the assessment of a civil penalty for the violations of Section 304 of EPCRA, 42 U.S.C. § 11004, set forth above, in the amount of **\$14,854.00**.

28. Respondent consents to the issuance of this Consent Agreement, and consents for purposes of settlement to the payment of the civil penalty cited in the foregoing Paragraph.

**PAYMENT TERMS**

29. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CAFO, Respondent shall pay the EPCRA civil penalty of \$14,854.00 no later than thirty (30) days after the effective date of the Final Order (the "Final Due Date") by either cashier's check, certified check, or electronic wire transfer, as set forth in the following paragraphs.

30. Payment of the EPCRA civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action, **EPCRA-03-2017-0002**;
- b. All checks shall be made payable to **United States Treasury**;

- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Heather Russell (513-487-2044)

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA  
Government Lockbox 979077  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
Contact: 314-418-1028

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

U.S. EPA  
Cincinnati Finance Center  
26 W. Martin Luther King Drive, MS-002  
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
D 68010727 Environmental Protection Agency

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX /Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Randolph Maxwell 202-874-3720  
or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

31. Respondent shall submit proof of the penalty payment, noting the title and docket numbers of this case, to the following persons:

Lydia Guy (3RC00)  
Regional Hearing Clerk  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Lauren E. Ziegler (3RC42)  
Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

32. The EPCRA civil penalty stated herein is based upon Complainant’s consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045. The penalty is consistent with 40 C.F.R. Part 19 and the *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* (September 30, 1999).

33. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent’s failure to make timely payment by the final due date or to comply with the conditions in this CAFO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

34. Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this fully executed CAFO is mailed or hand-delivered to Respondent. However, EPA will

not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

35. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the Final Due Date and an additional \$15.00 for each subsequent thirty (30) day period the penalties remain unpaid.

36. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

37. Failure by Respondent to pay the EPCRA civil penalty assessed by the Final Order in full by the Final Due Date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

#### **GENERAL PROVISIONS**

38. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 325 of EPCRA, 42 U.S.C. § 11045.

39. The provisions of the CAFO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

40. This Consent Agreement and the accompanying Final Order resolve only the civil penalty claims for the specific violations alleged in this Consent Agreement. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. Nor shall anything in this Consent Agreement and Final Order be construed to limit the United States authority to pursue criminal sanctions. In addition this settlement is subject to all limitations on the scope of resolution and the reservation of rights set forth in 40 C.F.R. §22.18(c). Further, Complainant reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder, and any other federal laws or regulations for which Complainant has jurisdiction, to enforce the provisions of this Consent Agreement and accompanying Final Order following its filing with the Regional Hearing Clerk.

41. Each party to this action shall bear its own costs and attorney's fees.

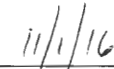


In re: ICL-IP America, Inc.


EPA Docket No. EPCRA 03-2017-0002

FOR ICL-IP AMERICA, INC.

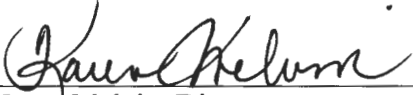
  
Signature

  
DATE

Print Name  
**Vijay J. Shroff, General Counsel**

Title  


FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY

  
\_\_\_\_\_  
Karen Melvin, Director  
Hazardous Site Cleanup Division

NOV 15 2016  
\_\_\_\_\_  
DATE

**BEFORE THE UNITED STATES**  
**ENVIRONMENTAL PROTECTION AGENCY**  
**REGION III**

<b>In the Matter of:</b>	)	
	)	<b>US EPA Docket No.: EPCRA-03-2017-0002</b>
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<b>ICL-IP America, Inc.</b>	)	
<b>622 Emerson Road, Suite 500</b>	)	
<b>St. Louis, MO 63141-6742,</b>	)	
	)	
<b>Respondent.</b>	)	<b>Proceedings Pursuant to Sections 304</b>
	)	<b>and 325 of the Emergency Planning and</b>
	)	<b>Community Right-to-Know Act,</b>
<b>ICL-IP America, Inc.</b>	)	<b>42 U.S.C. §§ 11004 and 11045</b>
<b>11636 Huntington Road</b>	)	
<b>Gallipolis Ferry, WV 25515,</b>	)	
	)	
<b>Facility.</b>	)	
	)	

**FINAL ORDER**

Complainant, the Director of the Hazardous Site Cleanup Division, U.S. Environmental Protection Agency, Region III, and Respondent, ICL-IP America, Inc., have executed a document entitled "Consent Agreement," which I hereby ratify as a Consent Agreement in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 (with specific reference to Sections 22.13(b) and 22.18(b)(2) and (3)). The terms of the foregoing Consent Agreement are accepted by the undersigned and incorporated into this Final Order as if fully set forth at length herein.

Based upon the representations of the parties in the attached Consent Agreement, the penalty agreed to therein is based upon consideration of, *inter alia*, 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* (September 30, 1999), and the statutory factors set forth in Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045.

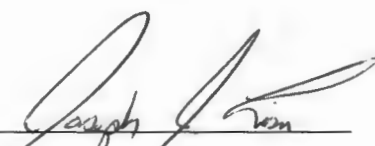
**NOW, THEREFORE, PURSUANT TO** Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 22.18(b)(3) of the Consolidated Rules of Practice, **IT IS HEREBY ORDERED** that Respondent pay a civil penalty in the amount of ***FOURTEEN THOUSAND, EIGHT HUNDRED AND***

**FIFTY-FOUR DOLLARS (\$14,854)**, in accordance with the payment provisions set forth in the Consent Agreement, and comply with the terms and conditions of the Consent Agreement.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Nov. 16 2016

Date

  
\_\_\_\_\_  
Joseph J. Lisa  
Regional Judicial and Presiding Officer  
U.S. EPA, Region III

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
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**CERTIFICATE OF SERVICE**

I hereby certify that the original and one copy of the foregoing Consent Agreement and Final Order ("CAFO") in the above-captioned matter has been filed with the EPA Region III Regional Hearing Clerk and that a copy of the CAFO was sent by UPS overnight mail to:

Mr. Vijay J. Shroff  
General Counsel—Americas  
ICL-IP America, Inc.  
622 Emerson Road, Suite 500  
St. Louis, MO 63141

I further certify that I have sent a pdf copy of the CAFO by electronic pdf to Vijay J. Shroff at Vijay.Shroff@icl-group.com, on this day.

11/17/16  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Suzanne Parent  
Associate Regional Counsel  
U.S. Environmental Protection Agency, Region III

