

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

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ENVIRONMENTAL PROTECTION
AGENCY REGION VII
REGIONAL HEARING CLERK

IN THE MATTER OF:

COFFEYVILLE RESOURCES REFINING
& MARKETING, LLC

RESPONDENT

Proceeding under Section 122(h)(1) of the
Comprehensive Environmental Response,
Compensation and Liability Act, as amended,
42 U.S.C. § 9622(h)(1).

EPA Region 6 Docket No.
06-06-09

EPA Region 7 Docket No.
CERCLA-07-2009-0011

AGREEMENT FOR
RECOVERY OF PAST RESPONSE COSTS

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I. JURISDICTION

1. This Agreement for Recovery of Past Response Costs is entered into pursuant to the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(h)(1), which authority has been delegated to EPA's Regional Administrators by EPA Delegation No. 14-14-D. This authority has been redelegated in EPA Region 6 to the Director of Region 6's Superfund Division by Regional Delegation R6-14-14-D. In EPA Region 7 this authority has been redelegated to the Director of Region 7's Superfund Division by Regional Delegation R7-14-014-D.

2. This Agreement is made and entered into by EPA and Coffeyville Resources Refining & Marketing, LLC ("CRRM"). CRRM consents to and will not contest EPA's authority to enter into this Agreement or to implement or enforce its terms.

II. BACKGROUND

3. CRRM operates a petroleum refinery located in Coffeyville, Kansas (the "Refinery"). CRRM processes crude oil into products such as gasoline, diesel fuels, heating oil and propane at the Refinery.

4. On or about October 22 and 23, 2005 and February 14 and 15, 2006, CRRM manufactured propane at the Refinery which contained higher than normal concentrations of organic fluorides. The propane was then sold by CRRM to distributors, who then sold certain of the propane to customers, including some who used the propane in their homes in vented and unvented appliances.

5. Gases produced from propane burned in properly vented appliances are prevented from entering occupied building space, while improperly vented and unvented appliances may allow combustion gases to enter occupied building space. When propane with higher than normal concentrations of organic fluorides is burned, hydrogen fluoride may potentially be among the gases produced and released. Additionally, when hydrogen fluoride is exposed to moisture, hydrofluoric acid is produced.

6. Pursuant to 40 C.F.R. § 302.4, hydrogen fluoride and hydrofluoric acid are each hazardous substances under Section 102 of CERCLA, 42 U.S.C. § 9602. In response to the release or threatened release of a hazardous substance as provided above, EPA alleges that it undertook response actions pursuant to Section 104 of CERCLA, 42 U.S.C. § 9604. In performing this response action, EPA alleges that it has incurred response costs. EPA alleges that CRRM is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is liable for response costs incurred by EPA. CRRM denies that it is a responsible party pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and denies that it is liable for response costs incurred by EPA.

7. The total response costs of the United States did not exceed \$500,000, excluding interest.

8. EPA and CRRM recognize that this Agreement has been negotiated in good faith and that this Agreement is entered into for the purpose of minimizing litigation and without the admission or adjudication of any issue of fact or law.

III. PARTIES BOUND

9. This Agreement shall be binding upon EPA and CRRM and its successors and assigns. Any change in ownership or corporate or other legal status of CRRM, including but not limited to, any transfer of assets or real or personal property, shall in no way alter CRRM's responsibilities under this Agreement. Each signatory to this Agreement certifies that he or she is authorized to enter into this Agreement and to bind legally the party he or she represents.

IV. DEFINITIONS

10. Unless otherwise expressly provided herein, terms used in this Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Agreement or in any appendix attached hereto, the following definitions shall apply:

a. "Agreement" shall mean this Agreement for Recovery of Past Response Costs.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*

c. "Day" shall mean a calendar day. In computing any period of time under this Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

e. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

f. "Paragraph" shall mean a portion of this Agreement identified by an Arabic numeral or a lower case letter.

g. "Parties" shall mean EPA and CRRM.

h. "Past Response Costs" shall mean all costs, including but not limited to direct and indirect costs, that EPA has incurred or paid in connection with: (i) overseeing the work performed by CRRM resulting from the distribution of propane containing higher than normal concentrations of organic fluorides as described in Section II (Background); or (ii) otherwise responding as a result of the distribution of propane containing higher than normal concentrations of organic fluorides as described in Section II (Background) above, plus accrued Interest on all such costs.

i. "Section" shall mean a portion of this Agreement identified by a Roman numeral.

j. "United States" shall mean the United States of America, including its departments, agencies, and instrumentalities.

V. PAYMENT OF PAST RESPONSE COSTS

11. Within 30 days of the effective date of this Agreement, CRRM shall pay to EPA Region 6 the sum of \$193,670.67 and to EPA Region 7 the sum of \$54,625.06 in reimbursement of Past Response Costs. CRRM shall make these payments by two separate wire transfers directed to the Federal Reserve Bank of New York using the following information:

Federal Reserve Bank of New York
ABA – 021030004
Account – 68010727
SWIFT address – FRNYUS33
33 Liberty Street
New York NY 10045
The field tag of the Fedwire message should read
"D68010727 Environmental Protection Agency"

12. At the time of payment, CRRM shall also send notice that payment has been made to EPA in accordance with Section XI (Notices). Such notice shall reference the docket numbers that appear on the face of this Agreement.

VI. FAILURE TO COMPLY WITH AGREEMENT

13. Interest on Late Payments. If CRRM fails to make any payment required by Paragraph 11 above by the date required, Interest shall continue to accrue on the unpaid balance through the date of payment.

14. Stipulated Penalty.

a. If any amounts due to EPA under Paragraph 11 are not paid by the date required, CRRM shall be in violation of this Agreement and shall pay to EPA, as a stipulated penalty, in addition to the Interest required by Paragraph 13 above, \$500 for each day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made in the same manner as for the payment of Past Response Costs provided in Section V (Payment of Past Response Costs) above.

c. At the time of each payment, CRRM shall also send notice that payment has been made to EPA in accordance with Section XI (Notices). Such notice shall reference the docket numbers that appear on the face of this Agreement.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified CRRM of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Agreement.

15. In addition to the Interest and Stipulated Penalty payments required by this Section and any other remedies or sanctions available to EPA by virtue of CRRM's failure to comply with this Agreement, CRRM shall be subject to enforcement action pursuant to Section 122(h)(3) of CERCLA, 42 U.S.C. § 9622(h)(3). If the United States, on behalf of EPA, brings an action to enforce this Agreement, CRRM shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

16. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Agreement. Payment of stipulated penalties shall not excuse CRRM from the payment of Past Response Costs as required by Section V (Payment of Past Response Costs) or from performance of any other requirements of this Agreement.

VII. COVENANT NOT TO SUE BY EPA

17. Except as specifically provided in Section VIII (Reservations of Rights by EPA), EPA covenants not to sue and agrees not to assert any claims or causes of action against CRRM pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), relating to the manufacture of propane by CRRM on or about October 22 and 23, 2005 and February 14 and 15, 2006, including to recover the Past Response Costs. This covenant shall take effect upon receipt by EPA of all amounts required by Section V (Payment of Response Costs) and any amounts due under Section VI (Failure to Comply with Agreement). This covenant not to sue is conditioned upon the satisfactory performance by CRRM of its obligations under this Agreement. This covenant not to

sue extends only to CRRM and does not extend to any other person.

VIII. RESERVATIONS OF RIGHTS BY EPA

18. EPA reserves, and this Agreement is without prejudice to, all rights against CRRM with respect to all matters not expressly included within the Covenant Not to Sue by EPA in Section VII of this Agreement. Notwithstanding any other provision of this Agreement, EPA reserves all rights against CRRM with respect to:

- a. liability for CRRM's failure to meet a requirement of this Agreement;
- b. liability for costs incurred or to be incurred by the United States that are not within the definition of Past Response Costs;
- c. liability for injunctive relief or administrative order enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606;
- d. criminal liability; and
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments.

19. Nothing in this Agreement is intended to be nor shall it be construed as a release, covenant not to sue, or compromise of any claim or cause of action, administrative or judicial, civil or criminal, past or future, in law or in equity, which the United States may have against any person, firm, corporation or other entity not a signatory to this Agreement.

IX. COVENANT NOT TO SUE BY CRRM

20. CRRM covenants not to sue and agrees not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the payments of Past Response Costs described in Section V of this Agreement, including any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b), 9607, 9611, 9612, 9613, or any other provision of law.

21. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

X. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

22. EPA and CRRM agree that the actions undertaken by CRRM in accordance with this Agreement do not constitute an admission of any liability by CRRM. CRRM denies, and

retains the right to controvert in any subsequent proceedings, other than proceedings to implement or enforce this Agreement, the validity of the facts or allegations contained in this Agreement. Nothing in this Agreement constitutes an admission of liability by CRRM. Specifically: (a) CRRM denies that it is a responsible party as that term is defined in Section 107(a) of CERCLA, 42 U.S.C. § 9607(a); (b) CRRM denies that it was the owner or operator of a facility from which a hazardous substance was released, it did not own or operate a facility at which a hazardous substance was disposed, and it did not arrange for the transport or disposal of a hazardous substance; (c) CRRM asserts that it sold propane, a useful product, to bulk distributors who then sold the propane to consumers who used the propane in their propane appliances; and (d) CRRM asserts that no hazardous substances was contained in the product that CRRM sold to bulk distributors.

23. The Parties agree that CRRM is entitled, as of the effective date of this Agreement, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for matters addressed in this Agreement. The matters addressed in this Agreement are Past Response Costs.

24. In any subsequent administrative or judicial proceeding initiated by EPA, or by the United States on behalf of EPA, for injunctive relief, recovery of response costs, or other relief, CRRM shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue by EPA set forth in Section VII.

25. The Parties agree that this Agreement is to govern the Parties' differences regarding resolution of EPA response costs, and the Agreement is not intended to and should not be used by CRRM, EPA, or any non-signatory to the Agreement for any other purpose not specifically identified above.

XI. NOTICES

26. Whenever, under the terms of this Agreement, notice is required to be given or a document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of this Agreement with respect to EPA and CRRM.

As to EPA:

Amy Salinas
U.S. Environmental Protection Agency, Region 6
1445 Ross Avenue
Suite 1200
Mail Code: 6RC-S
Dallas, Texas 75202-2733

David Hoefer
Attorney-Adviser
U.S. Environmental Protection Agency, Region 7
901 North 5th Street
Mail Code: CNSL/SUPR
Kansas City, Kansas 66101

As to CRRM:

Christopher G. Swanberg
Coffeyville Resources LLC
2277 Plaza Drive, Suite 500
Building B
Sugar Land, Texas 77479

LeAnn M. Johnson-Koch
DLA Piper LLP (US)
500 8th Street, NW
Washington, DC 20004

XII. INTEGRATION

27. This Agreement constitutes the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Agreement.

XIII. PUBLIC COMMENT

28. This Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, EPA may modify or withdraw its consent to this Agreement if comments received disclose facts or considerations which indicate that this Agreement is inappropriate, improper or inadequate.

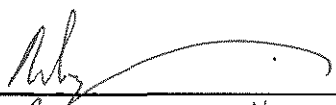
XIV. EFFECTIVE DATE

29. The effective date of this Agreement shall be the date upon which EPA issues written notice that the public comment period pursuant to Paragraph 27 above has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Agreement.

IT IS SO AGREED:

FOR COFFEYVILLE RESOURCES REFINING & MARKETING, LLC

10-13-09
Date


Robert W. Haysen
EVP Refining Operations

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 6


11/9/09
Date

Samuel Coleman, P.E.

SAMUEL COLEMAN, P.E.
Director, Superfund Division
U.S. Environmental Protection
Agency, Region 6
1445 Ross Ave, Suite 1200
Dallas, Texas 75202

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 7

10/30/09
Date



CECILIA TAPIA
Director, Superfund Division
U.S. Environmental Protection
Agency, Region 7
901 North 5th Street
Kansas City, Kansas 66101