



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

AUG 07 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Rami S. Hanash
Senior Environmental Corporate Counsel
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179

Re: Union Pacific Railroad Company, Dupo, Illinois, Consent Agreement and Final Order
Docket Nos. MM-05-2013-0008 CERCLA-05-2013-0012 EPCRA-05-2013-0021

Dear Mr. Hanash:

Enclosed please find a copy of the 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 August 7, 2013.

Please pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$17,264 in the manner prescribed in paragraph 47, and reference your check with the billing document number 2751330B012 and the docket number CERCLA-05-2013-0012.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$11,511 in the manner prescribed in paragraph 49, and reference your check with the docket number EPCRA-05-2013-0021.

Your payments are due on September 6, 2013.

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 John P. Steketeé, Associate Regional Counsel, at (312) 886-0558. Thank you for your assistance in resolving this matter.

Sincerely,

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5 MM-05-2013-0008

In the Matter of:) Docket No CERCLA-05-2013-0012 EPCRA-05-2013-0021
)
Union Pacific Railroad Company,)
Dupo, Illinois,)
)
Respondent. AUG 7 2013)
)
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

Proceeding to Assess a Civil Penalty Under
Section 109(b) of the Comprehensive
Environmental Response, Compensation and
Liability Act, and Section 325(b)(2) of the
Emergency Planning and Community Right-
to-Know Act of 1986

Consent Agreement and Final Order

Preliminary Statement

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); Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2); 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 Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Union Pacific Railroad Company, a Delaware corporation doing business in the State of Illinois.

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 the best interest of both parties 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 reportable quantity of the hazardous substance.

10. 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).

11. 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 community emergency coordinator for 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. The owner or operator of a facility from which there is a transportation-related release may satisfy the notice requirements of this section by dialing 911 or, in the absence of a 911 emergency telephone number, the operator.

12. 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.

13. 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), as modified by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, authorize U.S. EPA to assess a civil penalty for violation of CERCLA Section 103 and EPCRA Section 304.

Factual Allegations and Alleged Violations

14. Respondent is a corporation and, therefore, is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

15. At all times relevant to this CAFO, Respondent was an owner or operator of a facility in Dupou, Illinois which meets the definition of a "Facility" under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

16. At all times relevant to this CAFO, Respondent was in charge of the Facility.

17. Hydrogen fluoride (CAS #7664-39-3) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. Hydrogen fluoride (CAS #7664-39-3) is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2) and has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

19. Hydrogen fluoride (CAS #7664-39-3) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1 and is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(e).

20. At all times relevant to this CAFO, Respondent produced, used or stored hydrogen fluoride at the facility.

21. On March 3, 2012 at or about 11:51 a.m., a release occurred from Respondent's facility (Release). During this release, approximately 547 pounds of hydrogen fluoride spilled, leaked, poured, emptied, discharged, or escaped onto the land surface or land. In a 24 hour time period, this release exceeded 100 pounds. The release of hydrogen fluoride is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) and Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

22. Respondent had knowledge of the release on March 3, 2012, at approximately 11:51 a.m.

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

24. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) to the Illinois Emergency Management Agency (IERC) and the St. Clair County LEPC.

Count 1

25. Complainant incorporates paragraphs 1 through 24 of this CAFO as if set forth in this paragraph and alleges the following:

26. Respondent notified the NRC of the release on March 4, 2012 at 8:18 a.m.

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

28. 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).

Count 2

29. Complainant incorporates paragraphs 1 through 24 of this CAFO as if set forth in this paragraph and alleges the following:

30. Respondent notified the 911 operator of the release on March 3, 2012 at 1:26 p.m.

31. Respondent did not immediately notify the 911 operator after Respondent had knowledge of the release.

32. Respondent's failure to immediately notify the 911 operator of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Civil Penalty

33. Complainant has determined that an appropriate civil penalty to settle this action is \$17,264 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).

34. Within 30 days after the effective date of this CAFO, Respondent will pay \$17,264 to resolve the alleged CERCLA violation. Respondent will forward payment 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

For checks sent by express mail, Respondent will forward 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: Union Pacific Railroad Company, the docket number of this CAFO and the billing document number 2751330B012.

35. Complainant has determined that an appropriate civil penalty to settle this action is \$11,511 for the EPCRA 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 EPCRA/CERCLA Enforcement Response Policy.

36. Within 30 days after the effective date of this CAFO, Respondent will pay \$11,511 to resolve the alleged EPCRA violation. Respondent will forward payment 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

For checks sent by express mail, Respondent will forward payment 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: Union Pacific Railroad Company and the docket number of this CAFO EPCRA-05-2013-0021.

37. 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

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

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

38. Respondent is aware that, pursuant to Internal Revenue Service guidelines, this civil penalty may not be deductible for federal tax purposes.

39. 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.

40. In accordance with 31 C.F.R. 901.9, Respondent agrees to pay the following on any amount overdue under this CAFO: (1) interest on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. 3717; (2) a \$15 handling charge for each

month that any portion of the penalty is more than 30 days past due; and (3) a six percent (6%) per year penalty on any principal amount ninety days past due.

General Provisions

41. This CAFO resolves Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

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

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

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

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

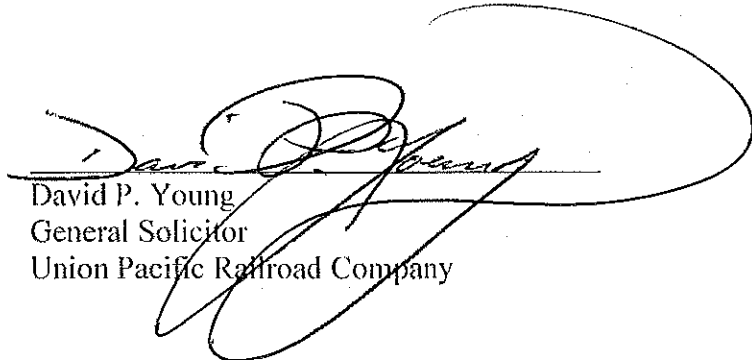
46. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

Union Pacific Railroad Company, Respondent

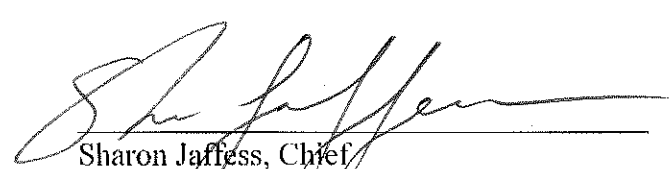
July 24, 2013
Date



David P. Young
General Solicitor
Union Pacific Railroad Company

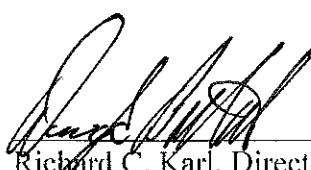
U.S. Environmental Protection Agency, Complainant

July 30, 2013
Date



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

9/31/2013
Date



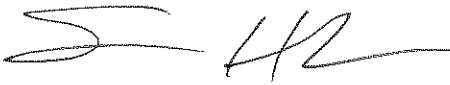
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Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: Union Pacific Railroad Company, Dupo, Illinois
Docket No. MM-05-2013-0008 CERCLA-05-2013-0012 EPCRA-05-2013-0021

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.

7-31-13
Date



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

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PROTECTION AGENCY

In the Matter of: Union Pacific Railroad Company, Dupu, Illinois
Docket No. MM-05-2013-0008 CERCLA-05-2013-0012 EPCRA-05-2013-0021

Certificate of Service

I, James Entzinger, 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:


Rami S. Hanash
Senior Environmental Compliance Counsel
Union Pacific Railroad Company
1400 Douglas Street, MS 1580
Omaha, Nebraska 68179

RECEIVED

AUG 7 2013

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 7 day of August, 2013


~~James Entzinger~~ Sarah P. Sanders
U.S. Environmental Protection Agency
Region 5