



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

JUN - 1 2015

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Patricia McGee
Legal Department D-7094
1007 North Market Street
Wilmington, Delaware 19898

Re: Danisco USA Inc., Terre Haute, Indiana
Consent Agreement and Final Order

Dear Ms. McGee:


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 June 1, 2015.

Please have your client pay the CERCLA civil penalty in the amount of \$14,500 in the manner prescribed in paragraphs 35 and 36 and reference your payment with the CERCLA docket number CERCLA-05-2015-0004, and the CERCLA billing document number 2751530B004.

The payment is due on July 1, 2015.

Please feel free to contact Ruth McNamara at mcnamara.ruth@epa.gov or by telephone at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Stuart Hersh, Associate Regional Counsel, at hersh.stuart@epa.gov or by telephone at (312) 886-6235. Thank you for your assistance in resolving this matter.

Sincerely,


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

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5



In the Matter of:) Docket No. CERCLA-05-2015-0004
)
Danisco USA Inc.) Proceeding to Assess a Civil Penalty Under
Terre Haute, Indiana,) Section 109(b) of the Comprehensive
) Environmental Response, Compensation and
Respondent.) Liability Act
)
)
_____)

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), 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 Danisco USA Inc., a corporation doing business in the State of Indiana.

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 reportable quantity of the hazardous substance.

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 U.S. 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 \$32,500 per day of violation

that occurred after 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 Violations

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 11 West Litesse Drive, Terre Haute, Indiana (facility).

14. Respondent's facility consists of a building, structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or 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. Sulfuric acid CAS# 7664-93-9 is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. Sulfuric acid CAS# 7664-93-9 has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On December 8, 2011, a release of sulfuric acid started at Respondent's facility at or about 8:53 a.m. eastern time (the release).

19. The release from Respondent's facility ended on December 8, 2011 at or about 9:56 a.m., within a 24 hour period from the start of the release.

20. Approximately 5,436 pounds of sulfuric acid was released from the Respondent's facility during the December 8, 2011 release.

21. In a 24 hour time period, the release of 5,436 pounds exceeded 1,000 pounds.

22. The release from Respondent's facility exceeded the 1,000 pound sulfuric acid reportable quantity beginning at or about 9:05 a.m., on December 8, 2011.

23. During the release, approximately 5,436 pounds of sulfuric acid spilled, leaked, pumped, poured, emitted, emptied, discharged or escaped, into the air, water or land.

24. The release occurred in a manner which would require notification under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

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

26. At or about 9:55 a.m. on December 8, 2011, Respondent had knowledge that a release had occurred and was occurring at its facility.

27. At or about 10:00 a.m. on December 8, 2011, Respondent knew or should have known that the release was a release of sulfuric acid.

28. At or about 10:00 a.m. on December 8, 2011, Respondent knew or should have known that the December 8, 2011 release had exceeded the 24-hour 1,000 pound reportable quantity for sulfuric acid.

Count 1

29. Complainant incorporates paragraphs 1 through 28 as if set forth in this paragraph.

30. Respondent notified the NRC of the December 8, 2011, sulfuric acid release on December 8, 2011, at approximately 1:26 p.m. Central Time.

31. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the December 8, 2011, sulfuric acid release.

32. Respondent's failure to immediately notify the NRC of the December 8, 2011 sulfuric acid release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Civil Penalty

33. Complainant has determined that an appropriate civil penalty to settle this action is \$14,500 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 must pay a \$14,500 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:

U.S. Bank
Government Lockbox 979076
U.S. EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

In the comment section on the check, state the following: Danisco USA Inc., the docket number of this CAFO and billing document number 2751530B004.

35. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number, and the billing document number, if any, 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 Blvd.
Chicago, IL 60604-3511

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

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

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

37. 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.

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

General Provisions

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

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

41. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

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

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

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

45. 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.

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

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

In the Matter of: Danisco USA Inc., Terre Haute, Indiana
Docket No.: CERCLA-05-2015-0004

Danisco USA Inc., Terre Haute, Indiana, Respondent

5/6/15
Date

Charles Nichols
Charles Nichols
Plant Manager
Danisco USA Inc.

U.S. Environmental Protection Agency, Complainant

05/21/2015
Date

M. Cecilia Moore
M. Cecilia Moore, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

5-26-15
Date

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

In the Matter of: Danisco USA Inc., Terre Haute, Indiana
Docket No. CERCLA-05-2015-0004

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.

5-28-2015

Date



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

In the Matter of: Danisco USA Inc., Terre Haute, Indiana
Docket No. CERCLA-05-2015-0004

CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing **Consent Agreement and Final Order**, which was filed on June 1, 2015, this day in the following manner to the addressees:

Copy by certified mail
return-receipt requested:

Patricia McGee
Legal Department D-7094
1007 North Market Street
Wilmington, Delaware 19898

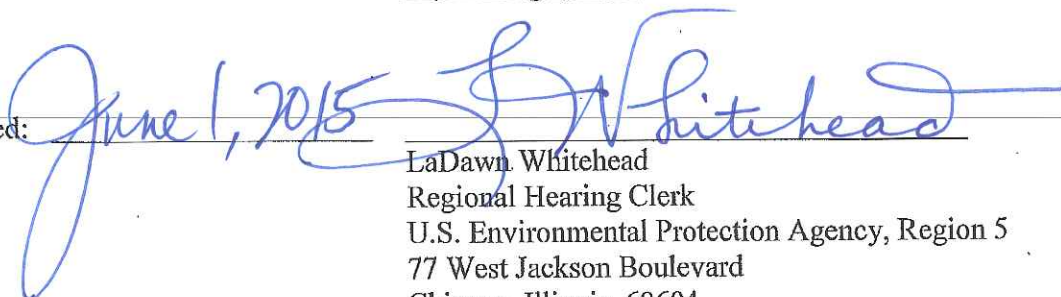
Copy by e-mail to
Attorney for Complainant:

Stuart Hersh
hersh.stuart@epa.gov

Copy by e-mail to
Regional Judicial Officer:

Ann Coyle
coyle.ann@epa.gov

Dated: June 1, 2015



LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604
(312) 886-3713

CERTIFIED MAIL RECEIPT NUMBER(S): 7011 1150 0000 2640 4413