



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

OCT 13 2006

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Mr. Gary Spence
Crystal Valley Coop
P.O. Box 210
Lake Crystal, MN 56055

Re: Crystal Valley Coop, 721 W. Humphrey, Lake Central, Lake Crystal, Minnesota
Docket Number CERCLA-05-2007-0002

Dear Mr. Spence:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on October 13, 2006. Please pay the civil penalty in the amount of \$18,789 in the manner prescribed in paragraphs **25** and **26** and reference your check with the number BD 27507308002 and docket number CERCLA-05-2007-0002. Your payment is due on November 13, 2006.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert Smith, Associate Regional Counsel, at (312) 886-0765. Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Robert Smith (w/enclosure)
Office of Regional Counsel
U.S. EPA Region 5

Steve Tomlyanovich
MN SERC

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	Docket No.
)	
Crystal Valley Coop)	Proceeding to Assess a Civil
721 W. Humphrey)	Penalty under Section 109 of
Lake Crystal, MN 56055)	the Comprehensive
)	Environmental Response,
)	Compensation, and Liability
<u>Respondent.</u>)	Act

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609, 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. Complainant is the Chief of the Chemical Emergency Preparedness and Prevention Section, Superfund Division, United States Environmental Protection Agency, Region 5 ("Complainant" or "U.S. EPA").

3. Respondent is Crystal Valley Coop, a cooperative doing business in Minnesota.

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

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issuance of a Consent Agreement and Final Order (CAFO).

40 C.F.R. § 22.13(b) (2004).

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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Crystal Valley Coop admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Crystal Valley Coop 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 a person in charge of a facility to immediately notify the National Response Center as soon as that person knows of a release of a hazardous substance from the facility in an amount equal to or greater than the substance's reportable quantity.

10. Under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), "person" means, among other things, an entity, individual, firm, corporation, consortium, joint venture, association, partnership, and commercial entity.

11. Under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), "facility" means, among other things, equipment, pipe, storage container, motor vehicle, rolling stock, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

12. Under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22), "release" means any spilling, leaking, emitting, emptying, discharging, escaping, or disposing into the environment.

13. Ammonia CAS# 7664-41-7 is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C § 9601(14), with a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

14. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), the EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collections Improvements 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 \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004 and to \$32,500 per day of violation for violations that occurred after March 15, 2004.

Factual Allegations

15. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601 (21).

16. Respondent's facility 721 W. Humphrey, Lake Crystal, Minnesota (Facility) is an equipment, pipe, storage container, motor vehicle, rolling stock, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

17. Respondent's Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

18. Respondent was in charge of the Facility on April 16, 2005.

19. On April 16, 2005, at or about 0840 Central Time, Respondent's Facility released approximately 2,200 pounds of ammonia (the release).

20. Respondent knew or had constructive knowledge of the release on April 16, 2005 at approximately 0840 Central Time.

21. Respondent did not notify the National Response Center of the release until April 18, 2005 at 1039 Central Time.

22. Respondent did not immediately notify the National Response Center as soon as Respondent knew or had constructive knowledge of the release.

23. Respondent's failure to notify immediately the National Response Center of the release violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Civil Penalty

24. The civil penalty for this violation was calculated to be \$28,907. In consideration of Respondent's cooperation,

willingness, and quick determination to participate in this streamlined enforcement action, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$18,789.

25. Within 30 days after the effective date of this CAFO, Respondent must pay a \$18,789 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. EPA, Region 5
ATTN: Superfund Receivables
P.O. Box 371099M
Pittsburgh, PA 15251-7531

The check must note the case title of this matter: In the Matter of Crystal Valley Coop, the docket number of this CAFO, and the billing document number 2750730B002.

Alternatively, Respondent may pay by wire transfer to Federal Reserve Bank of New York, Routing ABA Number 021030004 for Account Number 68010727 U.S. EPA. Such wire payment must reference the billing document number.

26. A transmittal letter, stating the case title, docket number, and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Ruth McNamara, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Robert Smith, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

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

28. 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.

29. 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 six percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

General Provisions

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

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

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

33. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 304 of EPCRA and Section 103 of CERCLA.

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

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

36. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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

SIGNATORIES

U.S. Environmental Protection
Agency, Complainant

Date: 10/12/06 By: Mark Horwitz
Mark Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section
Superfund Division
Region 5

Date: 10-12-06 By: Richard C. Karl
Richard C. Karl, Director
Superfund Division
U.S. EPA, Region 5 Division
Region 5

Date: 10/4/06 By: Dale Batten
Signature
Crystal Valley Coop,
Respondent
Dale Batten
Printed Name
Agronomy Manager
Title

In the Matter of:
Crystal Valley Coop
721 W. Humphrey
Lake Crystal, MN 56055
Docket # CERCLA-05-2007-0002

EBW

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. IT IS SO ORDERED.

Date: 10/13/06

By: *pa*

Bharat Mathur
Bharat Mathur, Acting
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

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Lake Crystal, MN 56055
Docket # CERCLA-05-2007-0002

sbw

CERTIFICATE OF SERVICE

I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number **CERCLA-05-2007-0002** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed a correct copy by first class, postage prepaid, certified mail, return receipt requested to Crystal Valley Coop, by placing it in the custody of the United States Postal Service addressed as follows:

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Mr. Gary Spence
Crystal Valley Coop
PO Box 210
Lake Crystal, MN 56055

on the 13th day of October, 2006.

Ruth McNamara

Ruth McNamara
U.S. Environmental Protection Agency
Region 5