



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NEW YORK 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2010 OCT 14 P 12:48
REGIONAL HEARING
CLERK

October 14, 2010

R. Juge Gregg, Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005

Re: In the Matter of Schering-Plough Products, LLC, Consent Agreement and Final Order

Dear Mr. Gregg:

Enclosed please find a copy of the fully-executed Consent Agreement and Final Order ("CAFO") for the above-referenced case. Please note there was an error with the docket number, and the docket number on page one of the CAFO now reflects the correct number, EPCRA-02-2010-4001.

If you have any questions, please call me at (212) 637-3164. Again, thank you for your cooperation and assistance in this matter.

Sincerely yours,

A handwritten signature in cursive script that reads "Jean H. Regna".

Jean H. Regna
Assistant Regional Counsel
Office of Regional Counsel

Enclosures

cc: Regional Hearing Clerk, Region 2 (with Original CAFO)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

_____))
In the Matter of:))
))
Schering-Plough Products, LLC))
Las Piedras Operations))
PRIDCO Industrial Park))
State Road 183))
Las Piedras, Puerto Rico,))
))
Respondent.))
_____)

**CONSENT AGREEMENT AND
FINAL ORDER**

Docket Number: EPCRA-02-2010-~~2001~~
4001

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
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EPRK

PRELIMINARY STATEMENT

1. This CA/FO is issued pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. § 11045. The Complainant in this action is the Director of the Emergency and Remedial Response Division of the United States Environmental Protection Agency, Region 2 ("EPA"), who has been delegated the authority to institute this action.

2. Pursuant to Section 22.13 of the revised Consolidated Rules of Practice, 40 Code of Federal Regulations ("C.F.R.") § 22.13(b), where parties agree to settlement of one or more causes of action before the filing of a Complaint, a proceeding may simultaneously be commenced and concluded by the issuance of a Consent Agreement and Final Order ("CA/FO") pursuant to 40 C.F.R. §§ 22.18(b)(2) and (3).

3. EPA and Respondent Schering-Plough Products, LLC ("Respondent") agree that settling this matter by entering into this CA/FO pursuant to 40 C.F.R. § 22.13(b) and 40 C.F.R. §§ 22.18(b)(2) and (3) is an appropriate means of resolving this case without further litigation.

STATUTORY BACKGROUND

1. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a vessel or offshore or onshore facility, as soon as he or she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such vessel or facility in a quantity equal to or greater than the reportable quantity, as designated pursuant to Section 102 of CERCLA, to immediately notify the National Response Center ("NRC") of such release. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), requires immediate notice by the owner or operator of a facility to the local emergency planning committees ("LEPCs") and the state emergency response commissions ("SERCs") for any area and state likely to be affected by the release, if a release of either an extremely hazardous substance, referred to in Section 302 of EPCRA, or a substance which requires notification under Section 103(a) of CERCLA, occurs

from a facility at which a hazardous chemical is produced, used, or stored. Section 304(c) of EPCRA requires any owner or operator of a facility from which there has been a release that is reportable under Section 304(a) of EPCRA to provide, as soon as practicable, a follow-up written notice (or notices) to the SERC and LEPC updating the information required under Section 304(b) of EPCRA.

2. Section 109 of CERCLA, 42 U.S.C. § 9609, provides for the assessment of penalties for violations of Section 103 of CERCLA. Section 325 of EPCRA, 42 U.S.C. § 11045, provides for the assessment of penalties for violations of Section 304 of EPCRA.

FINDINGS OF FACT

1. Respondent owns and/or operates a facility, located in and around the PRIDCO Industrial Park, State Road 183, Las Piedras, Puerto Rico (the "Facility").

2. On May 26, 2009, at approximately 6:00 a.m., a "release" of dichloromethane (methylene chloride) was discovered at Respondent's Facility (the "Release"). Within minutes after discovery of the Release, the Facility reportedly shut down the manufacturing process and halted the Release.

3. At approximately 20:00 or 8:00 p.m. on May 26, 2009, Respondent notified the NRC of the Release. Respondent's notification to the NRC stated that 3,784 pounds of dichloromethane (methylene chloride) were released from Respondent's Facility to the air during the Release. Subsequently, in its June 29, 2009 response to a June 5, 2009 EPA information request letter, Respondent provided an estimate of the amount of dichloromethane (methylene chloride) released during the Release as being 4,920 pounds.

4. At approximately 20:10 or 8:10 p.m. on May 26, 2009, Respondent reportedly attempted to notify the Humacao LEPC of the Release by telephone but there was no response. On May 27, 2009, Respondent reportedly contacted the Humacao LEPC by telephone and left a message regarding the Release.

EPA'S CONCLUSIONS OF LAW

1. Respondent is, and at all times referred to herein, was, a "person," within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

2. The Facility is a "facility," as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

3. Respondent was in charge of the Facility at the time of the Release.

4. The Release was a "release," as defined in Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) and Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

5. Dichloromethane (methylene chloride) is a "hazardous substance," as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14). The reportable quantity for dichloromethane (methylene chloride) is 1000 pounds, as specified in 40 C.F.R. Section 302.4.

6. The Release was not a federally permitted release, as defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

7. Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the NRC of the Release, and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

8. In Puerto Rico, the SERC is the Puerto Rico Environmental Quality Board ("PREQB"). The LEPC for the area where the Facility is located and which would likely be affected by the Release is the Humacao LEPC, and the contact information for this LEPC is Vanessa Del Moral, Humacao LEPC, JCA - Oficina Regional de Humacao.

9. Respondent violated the notification requirements of Section 304 of EPCRA, 42 U.S.C. § 11004, by failing to immediately notify the SERC and the LEPC for the area likely to be affected by the Release, and it is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CONSENT AGREEMENT

Based upon the foregoing, and pursuant to Section 109 of CERCLA and Section 325 of EPCRA, and the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (40 C.F.R. Part 22), it is hereby agreed by and between Complainant and Respondent, as follows:

1. For the purpose of this proceeding and in the interest of an expeditious resolution of this matter, pursuant to 40 C.F.R. § 22.18(b)(2), Respondent: a) admits the EPA has jurisdiction to commence a civil administrative proceeding for the violations alleged above; b) admits the Findings of Fact set forth above; c) consents to the assessment of the civil penalty as set forth below; d) consents to the issuance of the Final Order accompanying this Consent Agreement; and e) waives its right to contest the Findings of Fact or appeal the attached Final Order in any forum.

2. Respondent neither admits nor denies the EPA Conclusions of Law set forth above.

3. Respondent hereby certifies that it is now in compliance with all applicable requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

4. Respondent agrees to pay, by cashier's or certified check, a civil penalty in the total amount of eleven thousand five hundred and ten dollars (\$11,510.00), as described below.

Payment of the CERCLA portion of the penalty (\$5,755.00) shall be made by sending a cashier's or certified check payable to the "EPA Hazardous Substance Superfund." The check shall be identified with a notation of the name and docket number of this case (set forth in the caption on the first page of this document) and shall be sent to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

Payment of the EPCRA portion of the penalty (\$5,755.00) shall be made by sending a cashier's or certified payable to the "Treasurer, United States of America." The check shall be identified with a notation of the name and docket number of this case (set forth in the caption on the first page of this document) and shall be sent to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

A copy of each check and any transmittal letter(s) shall be sent to each of the following:

Jean H. Regna
Assistant Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, New York 10007

and

Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th Floor
New York, New York 10007.

Respondent agrees to make such payments on or before thirty (30) calendar days after the date of signature of the Final Order at the end of this document (hereafter referred to as the "due date").

- a. Failure to pay the penalty in full according to the above provisions may result in the referral of this matter to the U.S. Department of Justice or the U.S. Department of the Treasury for appropriate enforcement, including an action seeking collection of the amount set forth above, plus allowable interest and such other penalties as provided for in this Consent Agreement.

- b. Further, if payment is not received on or before the due date, Respondent agrees to pay interest, at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717, on the overdue amount from the due date through the date of payment. In addition, Respondent agrees to pay a late payment handling charge of \$15 for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid.
- c. On any principal amount not paid within ninety (90) days of the due date, Respondent further agrees to pay a 6% per annum penalty.

5. The penalties and interest specified in Paragraph 4, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of State or federal taxes.

6. This Consent Agreement is being voluntarily and knowingly entered into by the parties in full and final settlement of the civil liability that might have attached under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, as a result of the violations set forth in the "EPA Conclusions of Law" section, above, and Respondent's payment of the civil penalty in accordance with the terms and conditions of this section shall resolve any such liability.

7. Respondent has read the Consent Agreement, understands its terms, and voluntarily consents to its issuance and its terms and conditions, including payment of the full amount of the civil penalty in accordance with the terms set forth above. Respondent also consents to the issuance of the accompanying Final Order.

8. Respondent waives its right to request and/or obtain a hearing on this Consent Agreement, or the accompanying Final Order, including any right to contest any of the Findings of Fact and EPA Conclusions of Law set forth in said Consent Agreement and any right to contest any of the terms or conditions set forth in said Consent Agreement.

9. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during discussions between EPA staff and the Regional Judicial Officer of EPA Region 2, and further waives the right to be served with and to reply to any memorandum or communication addressed by EPA staff to the Regional Judicial Officer, where the purpose of such discussion, memorandum, or communication is to discuss a proposed settlement of this matter or to recommend that such official accept this Consent Agreement and issue the attached Final Order.

10. This Consent Agreement and any provision herein shall not be construed as an admission of liability in any adjudicatory or administrative proceeding, except in an action, suit, or proceeding to enforce this CA/FO or any of its terms and conditions.

11. This CA/FO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, State, or local law, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, State, or local permit. Nothing in this CA/FO

is intended to nor shall be construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this CA/FO shall not be a defense to any actions subsequently commenced pursuant to federal laws and regulations administered by EPA, and it is the responsibility of Respondent to comply with such laws and regulations.

12. Each party hereto shall bear its own costs and fees in this matter.

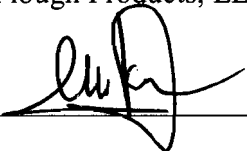
13. Full and complete satisfaction of the requirements of this CA/FO shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

14. The person signing below on behalf of Respondent hereby certifies that he or she is fully authorized by Respondent to execute this Consent Agreement on behalf of Respondent and to legally bind Respondent to this Consent Agreement in accordance with all of the terms and conditions contained herein.

15. The Director of the Emergency and Remedial Response Division of EPA Region 2 has been delegated the authority to sign the Consent Agreement in this action, and the Regional Judicial Officer of EPA Region 2 has been delegated the authority to sign the Final Order in this action.

16. Respondent consents to service upon Respondent of a copy of this CA/FO by any EPA employee, in lieu of service made by the EPA Region 2 Regional Hearing Clerk.

For Respondent
Schering-Plough Products, LLC:



Signature

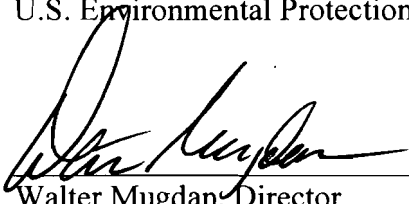
Date: SEP/27/2010

MIGUEL PAGAN
Name (Printed or Typed)

GENERAL MANAGER
Title (Printed or Typed)

Consent Agreement In the Matter of Schering-Plough Products, LLC
Docket Number: EPCRA-02-2010-2001

For Complainant
U.S. Environmental Protection Agency:



Walter Mugdan, Director
Emergency and Remedial Response
Division, Region 2

Date: 9/27/2010

In the Matter of Schering-Plough Products, LLC
Docket Number: EPCRA-02-2010-2001

FINAL ORDER

The Consent Agreement In the Matter of Schering-Plough Products, LLC, Docket Number: EPCRA-02-2010-2001, signed on behalf of Respondent Schering-Plough Products, LLC and the Environmental Protection Agency, is hereby approved, incorporated herein, and issued by U.S. EPA, as a Final Order. The effective date of this Final Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA, Region 2, New York, New York.

September 28, 2010

Date

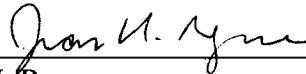


Helen Ferrara
Regional Judicial Officer
U.S. EPA, Region 2

In the Matter of Schering-Plough Products, LLC, Docket No. EPCRA-02-2010-4001

Certificate of Service

I certify that the foregoing Letter enclosing a fully-executed copy of the Consent Agreement and Final Order, dated September 28, 2010, was sent this day in the following manner to the addressees below:



Jean H. Regna
Assistant Regional Counsel
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 2

Original and one copy by hand-delivery to:

Office of Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 2
290 Broadway, 16th floor
New York, New York 10007-1866

**Copy by Email and Certified Mail,
Return Receipt Requested to:**

R. Juge Gregg, Esq.
Sidley Austin LLP
1501 K Street, N.W.
Washington, DC 20005