



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029**

| | | |
|---|---|--|
| In the Matter of: |) | |
| |) | U.S. EPA Docket No.: CERC-03-2011-0052 |
| Air Products and Chemicals, Inc. |) | U.S. EPA Docket No.: EPCRA-03-2011-0052 |
| 7201 Hamilton Blvd. |) | |
| Allentown, PA 18195 |) | |
| |) | |
| |) | Proceedings Pursuant to Sections |
| Respondent. |) | 103 and 109 of the Comprehensive |
| |) | Environmental Response, |
| |) | Compensation, and Liability Act, as |
| |) | amended, 42 U.S.C. §§ 9603 and 9609, |
| |) | and Sections 304 and 325 of the |
| Air Products and Chemicals, Inc. |) | Emergency Planning and Community |
| 2005 Reservoir Road |) | Right-to-Know Act, 42 U.S.C. §§ 11004 |
| Sparrows Point, MD 21219 |) | and 11045 |
| |) | |
| |) | |
| Facility. |) | |

CONSENT AGREEMENT AND FINAL ORDER

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the Administrator of the United States Environmental Protection Agency ("EPA") by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), as amended, 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, as well as under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 ("Part 22"). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

PRELIMINARY STATEMENT

The implementing regulations for the emergency notification requirements in Section 304 of EPCRA, 42 U.S.C. § 11004, are codified at 40 C.F.R. Part 355. On November 3, 2008, EPA issued a final rule, 73 *Fed. Reg.* 65451 (Nov. 3, 2008), *inter alia*, to make these regulations easier to read by presenting them in a plain language format. The amendments resulted in a re-numbering of 40 C.F.R. Part 355, which became effective on December 3, 2008. This CA/FO references the newly effective numbering, but includes the pre-2008 numbering in parentheses since those regulations were in effect at the time of the violations alleged herein.

EPA'S FINDINGS OF FACT

EPA makes the following findings of fact, which except for the facts supporting the jurisdictional allegations, Respondent neither admits nor denies:

1. Respondent, Air Products and Chemicals, Inc. ("Air Products"), is a Delaware corporation with its principal place of business located at 7201 Hamilton Boulevard, Allentown, Pennsylvania, 18195.
2. As a corporation, Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3 and 355.61.
3. At all times relevant to this CA/FO, Respondent was the owner or operator of the Facility located at 2005 Reservoir Road, Sparrows Point, Maryland, 21219 (hereinafter the "Facility"), within the meaning of Section 304 of EPCRA, 42 U.S.C. §§ 11004, and was in charge of the Facility, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
4. The Facility is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and their respective regulations, 40 C.F.R. §§ 302.3, and 355.61.
5. On November 25, 2008, EPA conducted an inspection of the Facility to determine compliance with Section 103 of CERCLA and Sections 302-312 of EPCRA.

6. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present a substantial danger to public health or welfare or to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) ("Reportable Quantity" or "RQ"). The list of hazardous substances and their applicable RQs is codified at 40 C.F.R. § 302.4.

7. The State Emergency Response Commission ("SERC") for the Facility is, and has been at all times relevant to this CA/FO, the Maryland Department of the Environment, located at 1800 Washington Road, Suite 540, Baltimore, Maryland, 21230.

8. The Local Emergency Planning Committee ("LEPC") for the Facility is, and has been at all times relevant to this CA/FO, the Baltimore County Local Emergency Planning Committee, located at 700 E. Joppa Road, Towson, Maryland, 21286.

9. At all times relevant to this CA/FO, the Facility was a facility at which a hazardous chemical was produced, used or stored.

10. Beginning on or about November 3, 2007, at or about 3:00 a.m., an estimated 4,000 pounds of ammonia, Chemical Abstracts Service ("CAS") No. 7664-41-7, were released from the Facility (the "2007 Release").

11. Beginning on November 20, 2008, at or about 4:00 p.m., an estimated 2,589 pounds of ammonia, CAS No. 7664-41-7, were released from the Facility (the "2008 Release").

12. Ammonia is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.4, with an RQ of one hundred (100) pounds, as listed in 40 C.F.R. § 302, Table 302.4.

EPA'S FINDINGS OF FACT REGARDING THE 2007 RELEASE

13. The findings of fact contained in paragraphs 1 through 12 of this CA/FO are incorporated by reference herein as though fully set forth at length.

14. The 2007 Release from Respondent's Facility constitutes a release of a hazardous substance in a quantity equal to, or greater than, the RQ.

15. On or about March 30, 2010, EPA issued a Show Cause letter to Respondent indicating that the Agency was considering the assessment of penalties against Respondent for

violations of Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004.

16. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used or stored, as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to, or greater than, the RQ, to immediately notify the National Response Center ("NRC") established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), of such release.

17. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the SERC when there has been a release of a hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance.

18. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the LEPC when there has been a release of a hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance.

19. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), requires, in relevant part, that when there has been a release of a hazardous substance in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, the owner or operator of that facility must provide a written follow-up report regarding the release to the SERC as soon as practicable.

20. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), as implemented by 40 C.F.R. Part 355, Subpart C (40 C.F.R. § 355.40), requires, in relevant part, that when there has been a release of a hazardous substance in a quantity equal to or greater than the RQ from a facility at which hazardous chemicals are produced, used, or stored, the owner or operator of that facility must provide a written follow-up report regarding the release to the LEPC as soon as practicable.

21. On or about November 3, 2007, at or about 8:34 a.m., Eastern Standard Time, Respondent notified the NRC of the 2007 Release.

22. On or about November 3, 2007, at or about 8:55 a.m., Eastern Standard Time, Respondent notified the SERC of the 2007 Release.

23. Respondent did not notify the LEPC of the 2007 Release.

24. On or about November 16, 2007, Respondent provided a written follow-up report regarding the 2007 Release to the SERC.

25. Respondent did not provide a written follow-up report regarding the 2007 Release to the LEPC.

EPA'S CONCLUSIONS OF LAW RELATED TO THE 2007 RELEASE

26. The 2007 Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

27. Although Respondent notified the NRC and the SERC of the 2007 Release, Respondent did not immediately notify the NRC and the SERC of the Release as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004, respectively. Immediate notification is required as soon as the Respondent knew or should have known of the 2007 Release.

28. Respondent did not notify the LEPC of the 2007 Release as required by Section 304 of EPCRA, 42 U.S.C. § 11004. Immediate notification is required as soon as the Respondent knew or should have known of the 2007 Release.

29. Respondent's failure to immediately notify the NRC as soon as the Respondent knew or should have known of the 2007 release of ammonia from the Facility in an amount equal to or in excess of its applicable RQ is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603. Therefore, Respondent is subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

30. Respondent's failure to immediately notify the SERC of the 2007 Release constitutes a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b). Therefore, Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

31. Respondent's failure to immediately notify the LEPC of the 2007 Release constitutes a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b).

Therefore, Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

32. Although Respondent provided a written follow-up report regarding the 2007 Release to the SERC, Respondent did not provide this report as soon as practicable, as required by Section 304 of EPCRA, 42 U.S.C. § 11004.

33. Respondent did not provide a written follow-up report regarding the 2007 Release to the LEPC. Section 304 of EPCRA, 42 U.S.C. § 11004, requires such a report to be provided as soon as practicable.

34. Respondent's failure to provide a written follow-up report regarding the 2007 Release to the SERC as soon as practicable constitutes a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Therefore, Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

35. Respondent's failure to provide a written follow-up report regarding the 2007 Release to the LEPC as soon as practicable constitutes a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Therefore, Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

EPA'S FINDINGS OF FACT REGARDING THE 2008 RELEASE

36. The findings of fact contained in paragraphs 1 through 35 of this CA/FO are incorporated by reference herein as though fully set forth at length.

37. The 2008 Release from Respondent's Facility constitutes a release of a hazardous substance in a quantity equal to, or greater than, the RQ.

38. On or about November 20, 2008, at or about 5:48 p.m., Eastern Standard Time, Respondent notified the SERC of the 2008 Release.

39. On or about December 4, 2008, Respondent provided a written follow-up report regarding the 2008 Release to the SERC.

40. Respondent did not provide a written follow-up report regarding the 2008 Release to the LEPC.

EPA'S CONCLUSIONS OF LAW RELATED TO THE 2008 RELEASE

41. The 2008 Release was not a "federally permitted release" as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

42. Although Respondent notified the SERC of the 2008 Release, Respondent did not immediately notify the SERC of the 2008 Release as required by Section 304 of EPCRA, 42 U.S.C. § 11004. Immediate notification is required as soon as the Respondent knew or should have known of the 2008 Release.

43. Although Respondent provided a written follow-up report regarding the 2008 Release to the SERC, Respondent did not provide this report as soon as practicable, as required by Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

44. Respondent's failure to immediately notify the SERC of the 2008 Release constitutes a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b). Therefore, Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

45. Respondent did not provide a written follow-up report regarding the 2008 Release to the LEPC. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires such a report to be provided as soon as practicable.

46. Respondent's failure to provide a written follow-up report regarding the 2008 Release to the SERC as soon as practicable constitutes a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Therefore, Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

47. Respondent's failure to provide a written follow-up report regarding the 2008 Release to the LEPC constitutes a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c). Therefore, Respondent is subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

CIVIL PENALTY

48. For the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations of CERCLA Section 103(a), 42 U.S.C. § 9603(a), and EPCRA, Sections 304(a) and (b), 42 U.S.C. § 11004(a) and (b), in the total amount of **\$62,130** (sixty-two thousand and one hundred and thirty dollars) and agrees to perform a Supplemental Environmental Project.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

49. The following Supplemental Environmental Project ("SEP") is consistent with applicable EPA policy and guidelines, specifically EPA's SEP Policy, effective May 1, 1998.

50. Respondent will install and operate at the Facility on the Plant 4 Cooling Tower an aqueous sodium hypochlorite system and will discontinue the use of chlorine as the biological control agent on this water cooling system ("the SEP"). The SEP is further described in Respondent's SEP Proposal, attached hereto as Attachment A and is incorporated herein by reference.

51. Respondent shall complete the installation of the aqueous sodium hypochlorite system within ninety (90) days of the effective date of this CA/FO. The aqueous sodium hypochlorite system shall be operational within one-hundred and twenty (120) days of the effective date of this CA/FO and shall continue to operate for at least three (3) years. Also within one hundred and twenty (120) days of the effective date of this CA/FO, chlorine use at the Plant 4 Cooling Tower shall be discontinued.

52. Respondent's total expenditure for implementation of the SEP shall not be less than \$39,472. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Completion Report, described in Paragraph 56 below.

53. Respondent hereby certifies that, as of the date of this Consent Agreement, Respondent is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by any other agreement, grant or as injunctive relief in this or any other case. Respondent further certifies that it has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

54. Respondent hereby agrees not to claim any funds expended in the performance of the SEP as a deductible business expense for purposes of Federal taxes.

55. Respondent shall notify EPA, c/o Alison Lecker at the address noted in Paragraph 56, below, when such implementation is complete. EPA may grant Respondent an extension of time to fulfill its SEP obligations to install if EPA determines, in its sole and unreviewable discretion, that, through no fault of Respondent, Respondent is unable to complete the SEP obligations within the time frame required by Paragraph 51 and this paragraph. Requests for any extension must be made in writing within forty-eight (48) hours of any event, the occurrence of which renders the Respondent unable to complete the SEP within the required time frame ("force majeure event"), and prior to the expiration of the allowed SEP completion deadline. Any requests should be directed to Alison Lecker at the address noted in Paragraph 56.

56. SEP Completion Report

a. Within twenty-one (21) days of completing implementation of the SEP, which shall be within one hundred and forty-one (141) days of the effective date of this CA/FO (if an extension is not granted by EPA in accordance with Paragraph 55 above), Respondent shall submit a SEP Completion Report to EPA, c/o Alison Lecker, U.S. EPA Region III, 1650 Arch Street (Mailcode 3RC41), Philadelphia, PA 19103. The SEP Completion Report shall contain the following information:

- (i) detailed description of the SEP as implemented;
- (ii) a description of any operating problems encountered and the solution thereto;
- (iii) a registered professional engineer's certification that the aqueous sodium hypochlorite system is installed correctly and running properly; and
- (iv) itemized costs and documentation thereof.

b. Respondent shall, by its officers, sign the reports required by this Paragraph 56 and certify, under penalty of law, that the information contained therein is true, accurate, and not misleading by including and signing the following statement:

I certify under penalty of law that I have examined and am familiar with the information submitted in this document and all attachments and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including possibly fines and imprisonment.

c. Respondent agrees that failure to submit a SEP Completion Report required by this Paragraph 56 shall be deemed a violation of this CA/FO and, in such an event, Respondent will be liable for stipulated penalties pursuant to Paragraph 59 below.

d. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this Paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment was being made.

57. Respondent agrees that EPA may inspect the Facility at which the SEP is implemented at any time in order to confirm that the SEP is being undertaken in conformity with the representations made herein. This right of inspection is in addition to all other inspection rights granted by law.

58. EPA Acceptance of SEP Completion Report

a. Upon receipt of the SEP Completion Report, EPA may exercise one of the following options:

- (i) notify the Respondent in writing that the SEP Completion Report is deficient, provide an explanation of the deficiencies, and grant Respondent an additional thirty (30) days to correct those deficiencies;
- (ii) notify the Respondent in writing that EPA has concluded that the project has been satisfactorily completed; or
- (iii) notify the Respondent in writing that EPA has concluded that the project has not been satisfactorily completed, and seek stipulated penalties in accordance with Paragraph 59 herein.

b. If EPA elects to exercise option (i) above, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency within ten (10) days of receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the respective SEP Completion Report. If agreement cannot be reached within this thirty (30) day period, EPA shall provide to the Respondent a written statement of its decision on the adequacy of the completion of the SEP, which shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this CA/FO. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with Paragraph 59 herein.

59. Stipulated Penalties

a. In the event that Respondent fails to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP described in Paragraph 50 above, and/or to the extent that the actual expenditures for the SEP do not equal or exceed the costs of the SEP required by Paragraph 52 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) below, if the SEP has not been completed satisfactorily pursuant to this CA/FO, Respondent shall pay a stipulated penalty to EPA in the amount of **\$31,367**.
- (ii) If the SEP is not completed in accordance with Paragraph 50, but the Complainant determines that the Respondent: (a) made good faith and timely efforts to complete the project; and (b) certifies, with supporting documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.
- (iii) If the SEP is completed in accordance with Paragraph 50, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to EPA in the amount of **\$6,273**.
- (iv) If the SEP is completed in accordance with Paragraph 50 and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
- (v) For failure to submit the SEP Completion Report required by Paragraph 56 above, Respondent shall pay a stipulated penalty in the amount of **\$200** for each day after the report was originally due until the report is submitted.

b. The determination of whether the SEP has been satisfactorily implemented and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole, reasonable discretion of EPA.

c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties, in accordance with the provisions of Paragraphs 60 and 61 below. Five percent of the penalty shall be payable to the EPA Hazardous Substance Superfund, and ninety-five percent payable to the United States Treasury. Interest and late charges shall be paid as set forth in Paragraphs 65 through 69 below.

PAYMENT TERMS

60. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CA/FO, the Respondent must pay the civil penalty no later than thirty (30) days after the effective date of the Final Order (the "final due date"). A payment of \$10,746 shall be made for the CERCLA portion of the penalty. An additional payment of \$51,384 shall be made for the EPCRA portion of penalty.

61. Payment shall be made as follows:

a. If payment is to be made by company check, separate CERCLA and EPCRA payment company checks shall be made as follows.

i. The CERCLA portion of the penalty shall be made payable to "EPA-Hazardous Substances Superfund" and sent to:

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

Contact: Natalie Pearson, (314) 418-4087

If the company check is sent overnight mail, it should be sent to:

U.S. Environmental Protection Agency
ATTENTION: Superfund Payments
U.S. Bank
1005 Convention Plaza
Mail Station FL-MO-C2GL
St. Louis, MO 63101

Contact Natalie Pearson, (314) 418-4087

The Respondent shall note on the company check for the CERCLA portion of the penalty the title and docket number of this case.

ii. The EPCRA portion of the penalty shall be made payable to "United States Treasury" and sent to:

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

If check is sent via overnight mail, it should be sent to:
U.S. Environmental Protection Agency
Fines and Penalties
U.S. Bank
1005 Convention Plaza
Mail Station FL-MO-C2GL
St. Louis, MO 63101

The Respondent shall note on the company check for the EPCRA portion of the penalty the title and docket number of this case.

b. Payment may be made via EFT (wire transfer) to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D 68010727
Environmental Protection Agency"

c. Payment may be made via Automated Clearinghouse (ACH), also known as Remittance Express (REX), to:

US Treasury REX / Cashlink ACH Receiver
ABA = 051036706
Account No.: 310006, Environmental Protection Agency
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:
5700 Rivertech Court
Riverdale, MD 20737
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

62. The Respondent shall submit a copy of the checks, or verification of wire transfer or ACH, to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Alison Lecker (3RC41)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

63. The CERCLA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and is consistent with 40 C.F.R. Part 19 and the *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* (September 30, 1999; "the ERP").

64. The EPCRA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 325 of EPCRA, 42 U.S.C. § 11045, and are consistent with 40 C.F.R. Part 19 and the ERP.

65. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

66. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the final due date. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

67. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to EPA's *Resources Management Directives - Cash Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

68. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

69. Failure by the Respondent to pay the \$62,130 penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

70. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

71. For the purpose of this proceeding, Respondent agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of the CA/FO.

72. For the purpose of this proceeding, Respondent neither admits nor denies factual allegations and conclusions of law, set forth in this CA/FO with the exception of Paragraph 70 above but expressly waives its rights to contest said allegations in this proceeding.

73. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

74. The provisions of this CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

75. This CA/FO resolves only those civil claims that are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent, in response to any condition that Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the

In the Matter of: Air Products and Chemicals, Inc.

U.S. EPA Docket Nos.

CERC-03-2011-0052

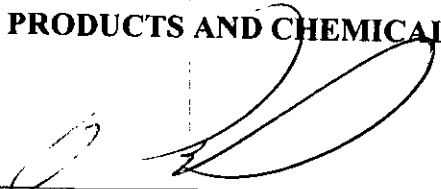
EPCRA-03-2011-0052

environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

76. Each party to this action shall bear its own costs and attorney's fees.

77. By entering into this CA/FO, the Respondent does not admit any liability for the civil claims alleged herein.

FOR AIR PRODUCTS AND CHEMICALS, INC.



TS

SIGNATURE Paul V. Vallone

December 8, 2010

DATE

Title: Ops Director NA Gases

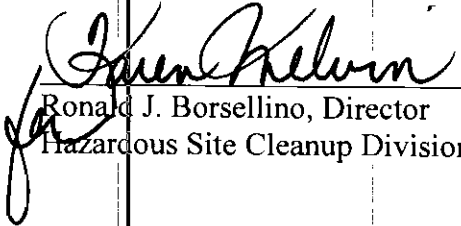
In the Matter of: Air Products and Chemicals, Inc.

U.S. EPA Docket Nos.

CERC-03-2011-0052

EPCRA-03-2011-0052

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



Ronald J. Borsellino, Director
Hazardous Site Cleanup Division

DEC 22 2010

DATE

In the Matter of:)
)
Air Products and Chemicals, Inc.)
7201 Hamilton Blvd.)
Allentown, PA 18195)
)
)
Respondent.)
)
Air Products and Chemicals, Inc.)
2005 Reservoir Road)
Sparrows Point, MD 21219)
)
Facility.)

U.S. EPA Docket No.: CERC-03-2011-0052
U.S. EPA Docket No.: EPCRA-03-2011-0052

Proceedings Pursuant to Sections
103 and 109 of the Comprehensive
Environmental Response,
Compensation, and Liability Act, as
amended, 42 U.S.C. §§ 9603 and 9609,
and Sections 304 and 325 of the
Emergency Planning and Community
Right-to-Know Act, 42 U.S.C. §§ 11004
and 11045

FINAL ORDER

Pursuant to Sections 103 and 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. §§ 9603 and 9609 and Sections 304 and 325 of the Emergency Planning and Community Right-to-Know Act of 1986, 42 U.S.C. §§ 11004 and 11045, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order.

The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

In the Matter of: Air Products and Chemicals, Inc.

U.S. EPA Docket Nos.

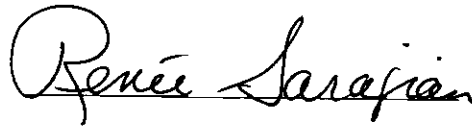
CERC-03-2010-0410
EPCRA-03-2010-0410

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

Date:

1/3/11



Renée Sarajian
Regional Judicial Officer
EPA, Region III