

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)	Docket No. CERCLA-05-2005-0002
)	
ABITEC Corporation)	Proceeding to Assess a Civil Penalty
1530 South Jackson Street)	Under Section 109(b) of the
Janesville, Wisconsin)	Comprehensive Environmental Response,
)	Compensation, and Liability Act
Respondent)	
_____)	

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 Chemical Emergency Preparedness Prevention Section, Emergency Response Branch 2, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is ABITEC Corporation, a corporation, doing business in the State of Wisconsin.
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 to the terms of this 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 hazardous substance's reportable quantity.

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 government's 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 Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$27,500 per day of violation for violations

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 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 a facility located at 1530 South Jackson Street, Janesville, Wisconsin (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. Ethylene Oxide, CAS No. 75-21-8, is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C § 9601(14).

17. Ethylene Oxide has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On June 17, 2005, at or about 7:15 a.m. CT, a release occurred from Respondent’s facility of approximately 130 pounds of ethylene oxide (the release).

19. In a 24 hour time period, the release of 130 pounds exceeded the 10 pound RQ.

20. During the release, approximately 130 pounds of ethylene oxide leaked, emitted, discharged, and/or escaped, into the ambient air.

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

22. Respondent had knowledge of the release on June 17, 2005, at approximately 7:15 a.m. CT.

23. Respondent notified the NRC of the release on June 27, 2005, at 10:26 CT.

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

25. Respondent's failure to notify immediately the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Civil Penalty

26. In consideration of ABITEC's cooperation and willingness to enter into this streamlined action, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$23,026.

27. Within 30 days after the effective date of this CAFO, Respondent must pay a \$23,026 civil penalty for the CERCLA violation using one of the following methods.

By Check: Respondent must pay the penalty 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

The check must note the following: In the Matter of ABITEC Corporation, the docket number of this CAFO and the billing document number _____.

By electronic funds transfer: Respondent must pay the penalty by electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read "D68010727
Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the following: In the Matter of ABITEC Corporation, the docket number of this CAFO and the billing document number 2150930B001 25.

28. A transmittal letter, stating the Respondent's name, case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter, or electronic funds transfer receipt to:

Regional Hearing Clerk, (E-13J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Ruth McNamara, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

29. This civil penalty is not deductible for federal tax purposes.
30. 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.

31. 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

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

33. 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.

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

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

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

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

38. 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.

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

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

SIGNATORIES

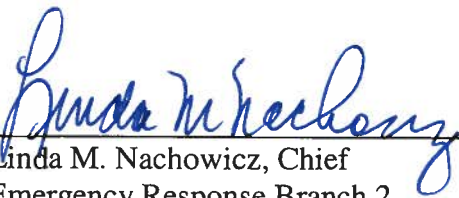
ABITEC Corporation, Respondent

9/22/08
Date

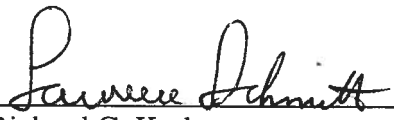

Jeffrey A. Walton, CEO

U.S. Environmental Protection Agency, Complainant

10/22/08
Date


Linda M. Nachowicz, Chief
Emergency Response Branch 2
Superfund Division

10/23/08
Date


for Richard C. Karl
Director, Superfund Division

**In the Matter of:
ABITEC Corporation, Janesville, Wisconsin
Consent Agreement and Final Order
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Final Order

This Consent Agreement and Final Order, as agreed to by the parties, shall become effective immediately upon filing with the U.S. EPA, Region 5, Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

10/29/08

Date

Walter W. Kovalich
for

Lynn Buhl
Regional Administrator
U.S. Environmental Protection Agency
Region 5

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Certificate of Service

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

Jeffrey A. Walton, CEO
ABITEC Corporation
1530 South Jackson Street
Janesville, Wisconsin

on the 3rd day of November, 2008

Ruth McNamara

Ruth McNamara
U.S. Environmental Protection Agency
Region 5