



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG. II
2009 MAR 27 AM 7:24
REGIONAL HEARING
CLERK

MAR 26 2009

CERTIFIED MAIL #
RETURN RECEIPT REQUESTED

Mr. Gordon S. Ziegler, President
Ziegler Chemical & Mineral Corporation
366 N Broadway Ste 210
Jericho, NY 11753

RE: Consent Agreement and Final Order
In the Matter of Ziegler Chemical & Mineral Corporation
Docket No. CWA-02-2008-3801

Dear Mr. Ziegler:

Enclosed please find the executed Consent Agreement and Final Order ("CAFO") negotiated with Ziegler Chemical & Mineral Corporation to settle the above-referenced enforcement action. Per paragraphs nine (9) and thirteen (13) of the CAFO, the initial \$7,500 payment toward the total civil penalty of \$55,000, and the initial \$5,000 purchase of emergency preparedness and response equipment for the New Market Fire Company, are due within thirty (30) days of service. If you have any questions, please have your attorney contact me at (212) 637-3203.

Sincerely,

Christopher Saporita

cc: Mark L. Manewitz

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

U.S. ENVIRONMENTAL
PROTECTION AGENCY-REG.II
MAR 27 AM 7:24
REGIONAL HEARING
CLERK

IN THE MATTER OF

Ziegler Chemical & Mineral Corporation
366 North Broadway, Suite 210
Jericho, New York 11753

Respondent

Proceeding pursuant to Section 311(b)(6) of
the Clean Water Act, 33 U.S.C. §1321(b)(6).

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No. CWA-02-2008-3801

Complainant, the United States Environmental Protection Agency ("EPA"), having filed the Complaint referenced herein on February 12, 2008, against Respondent, Ziegler Chemical & Mineral Corporation; and

Complainant and Respondent having agreed that settlement of this matter is in the public interest, and that entry of this Consent Agreement and Final Order ("CAFO" or "Agreement") without further litigation is the most appropriate means of resolving this matter;

NOW, THEREFORE, before the taking of any testimony, upon the pleadings, without adjudication of any issue of fact or law, and upon consent and agreement of the Parties, it is hereby Ordered and Adjudged as follows:

I. Preliminary Statement

1. EPA initiated this proceeding for the assessment of a civil penalty, pursuant to Section 311(b)(6) of the Clean Water Act ("CWA" or "Act"), 33 U.S.C. §1321(b)(6).
2. The Complaint alleges that Respondent failed to properly prepare and implement a Spill Prevention, Control and Countermeasures ("SPCC") Plan for its facility located at 600 Prospect Avenue, Piscataway, New Jersey 08854, in violation of Section 311(j)(1)(C) of the Act, 33 U.S.C. §1321(j)(1)(C), and 40 C.F.R Part 112, and proposed to assess a civil penalty of one hundred seven thousand two hundred dollars (\$107,200).
3. Respondent has not filed an Answer or requested a hearing pursuant to 40 C.F.R. Part 22.
4. This Agreement shall apply to, and be binding upon, Respondent, its officers, directors, employees, successors and assigns, including, but not limited to, subsequent purchasers.
5. Respondent stipulates that EPA has jurisdiction over the subject matter alleged in this Complaint, and that the Complaint states a claim upon which relief can be granted against

Respondent. Respondent waives any defenses it might have as to jurisdiction and venue, and, without admitting or denying the factual allegations contained in the Complaint, consents to the terms of this Agreement.

6. Respondent hereby waives its right to a judicial or administrative hearing or appeal on any issue of law or fact set forth in the Complaint.

II. Terms of Settlement

7. Pursuant to Section 311(b)(6) of the Act, 33 U.S.C. §1321(b)(6), the nature of the violations, Respondent's agreement to come into compliance with the Act and the SPCC regulations, Respondent's agreement to perform a Supplemental Environmental Project ("SEP"), and other relevant factors, EPA has determined that fifty-five thousand dollars (\$55,000) is an appropriate civil penalty to settle this action.
8. Respondent consents to the issuance of this Consent Agreement and Final Order, and agrees, for the purposes of settlement, to pay the civil penalty cited in the foregoing paragraph, to come into compliance with all applicable requirements of Section 311(j) of the Act and the SPCC regulations at 40 C.F.R. Part 112 in accordance with the schedule set out in Attachment A to this Agreement, and to perform the SEP as described in paragraphs 13 and 14, below.
9. Not more than thirty (30) days after the date of issuance of the executed CAFO, signed by the Regional Administrator of EPA Region 2, Respondent shall submit a cashier's or certified check, payable to the "Treasurer of the United States of America," for seven thousand five hundred dollars (\$7,500). Beginning ninety (90) days after the initial payment, Respondent shall quarterly submit a cashier's or certified check, payable to the "Treasurer of the United States of America" for two thousand five hundred dollars (\$2,500) for a total of nineteen quarterly payments totaling forty-seven thousand five hundred dollars (\$47,500). The entire penalty must be paid in full no more than five years plus thirty (30) days after the date of issuance of the executed Agreement. The checks submitted for payment 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. The checks shall be mailed to:

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

Respondent shall also timely mail copies of each payment to both of the following:

Christopher Saporita, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007

and

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

10. Failure to pay the penalty in full according to the above provisions will result in referral of this matter to the United States Department of Justice or the United States Department of the Treasury for collection.
11. If any required payment is not received on or before the applicable due date, interest will be assessed at the annual rate established by the Secretary of Treasury pursuant to the Debt Collection Act, 31 U.S.C. §3717, on the overdue amount from the due date through the date of payment. In addition, a late payment handling charge of fifteen dollars (\$15.00) will be assessed for each thirty (30) day period (or any portion thereof) following the due date in which the balance remains unpaid. A six percent (6%) per annum penalty also will be applied on any principal amount not paid within ninety (90) days of the applicable due date.

In addition, pursuant to Section 311(b)(6)(H) of the Clean Water Act, 33 U.S.C. §1321(b)(6)(H), if any payment is not received by the applicable due date, a quarterly nonpayment penalty will be imposed for each calendar quarter during which such nonpayment persists. The quarterly nonpayment penalty is 20% of the aggregate amount of penalties and quarterly nonpayment penalties which are unpaid as of the beginning of such quarter. Respondent also may be required to pay attorneys fees and costs for collection proceedings in connection with nonpayment.

12. The penalty to be paid is a civil penalty assessed by the EPA and shall not be deductible from Respondent's federal or state taxes.
13. Performance of the Supplemental Environmental Project
 - a. Respondent shall complete the following supplemental environmental project, which the parties agree is intended to secure significant environmental or public health protection and improvements. Beginning not more than thirty (30) days after receiving a copy of this Agreement, signed by the Regional Administrator of EPA Region 2, Respondent shall contribute twenty-five thousand dollars (\$25,000), in five equal annual payments of five thousand dollars (\$5,000), to the

“New Market Fire Company,” for the purchase of emergency preparedness and response equipment. Respondent shall also timely send copies of each payment to:

Christopher Saporita, Esq.
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 16th floor
New York, New York 10007

14. The total expenditure for the SEP shall be twenty-five thousand dollars (\$25,000), in accordance with the above-described performance. Before each annual expenditure is made by Respondent, Respondent shall provide EPA, at the address in paragraph 16.d, below, with a written description of the equipment that the New Market Fire Company proposes to purchase, so EPA can review whether the proposed equipment satisfies the requirements of the SEP. Within 15 days of receiving the written description of equipment, EPA shall notify Respondent whether the proposed equipment satisfies the requirements of the SEP. No credit will be given to Respondent for expenditures that are not approved by EPA. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP Reports described in paragraph 16, below.
15. Respondent hereby certifies that, as of the date of this 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 any of the activities that are part of the SEP.
16. **SEP Reports**
 - a. **Annual Reports.** Beginning no later than one year after the execution of this CAFO, Respondent shall submit SEP reports to EPA annually for the first four years of the SEP. The SEP reports shall contain the following information:
 - (i) A detailed description of the emergency preparedness and response equipment purchased by the New Market Fire Company to date;
 - (ii) Documentation of the itemized expenditures made by the New Market Fire Company for the purchase of the emergency preparedness and response equipment; and
 - (iii) A description of any problems encountered and the solutions implemented.
 - b. **SEP Completion Report.** No later than five years after the execution of this CAFO, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following information:
 - (i) A detailed description of the emergency preparedness and response equipment purchased by the New Market Fire Company;
 - (ii) Documentation of the itemized expenditures made by the New Market Fire Company for the purchase of the emergency preparedness and

- response equipment;
 - (iii) A description of any problems encountered and the solutions implemented;
 - (iv) Certification that the SEP has been completed pursuant to the provisions of this CAFO; and
 - (v) A description of the environmental and public health benefits resulting from implementation of the SEP.
- c. Respondent agrees that failure to submit any SEP Reports required by subsections (a) and (b), above, shall be deemed a violation of this Agreement, and Respondent shall become liable for stipulated penalties pursuant to paragraph 19 below.
- d. Respondent shall submit all notices and reports required by this Agreement by first class mail to:

Michael Hodanish, Oil Enforcement Coordinator
Oil Program Team
Response and Prevention Branch
U.S. Environmental Protection Agency
Regional Office II
2890 Woodbridge Avenue MS-211
Edison, New Jersey 08837-3679

- e. In itemizing its costs in the SEP completion report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the individual costs of the equipment for which payment is being made. Cancelled 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 is being made.
17. Respondent shall maintain legible copies of documentation of the underlying data for any and all documents or reports submitted to EPA pursuant to this Agreement, and shall provide the documentation of any such underlying data to EPA not more than seven days after a request for such information. In all documents or reports, including, without limitation, any SEP reports, submitted to EPA pursuant to this Agreement, Respondent shall, by its officers, sign and certify under penalty of law that the information contained in such document or report 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 the possibility of fines and imprisonment.

18. EPA Acceptance of SEP Reports
- a. After receipt of the SEP Completion Report, as set forth in Paragraph 16 above, EPA will notify the Respondent, in writing, regarding: (i) any deficiencies in the SEP Report itself, along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or (ii) indicate that EPA concludes that the project has been completed satisfactorily, or (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 19 below.
 - b. If EPA elects to exercise option (i) above, i.e., if the SEP Report is determined to be deficient but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph 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 notification of objection to reach agreement on changes necessary to the SEP Report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision 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 Agreement. 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 19 below.
19. Stipulated Penalties for Failure to Implement the Attached Schedule or Complete the SEP
- a. In the event that Respondent fails to comply with any of the terms or provisions of the SEP, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 - (i) In the event that Respondent fails to implement the schedule set out in Attachment A to this Agreement, or fails to complete the SEP satisfactorily in accordance with paragraphs 13 and 14 above, Respondent shall pay a stipulated penalty to the United States in the amount of fifty-two thousand two hundred dollars (\$52,200), which is the amount by which the proposed penalty was mitigated in the interest of settlement.
 - (ii) For failure to timely submit any of the reports, or failure to submit complete reports, as required by paragraph 16 above, Respondent shall pay a stipulated penalty of \$500 for each report that is late or incomplete, for each day that it is late or incomplete.
 - b. The determinations as to whether Respondent has implemented the schedule set out in Attachment A to this Agreement, whether the SEP has been satisfactorily completed, and whether Respondent has made a good faith, timely effort to comply with reporting requirements, shall be within the sole discretion of EPA.
 - c. Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of a written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 9 above. Interest and late charges shall be paid as described in paragraph 20 below.

- d. Nothing in this Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Agreement or of the statutes and regulations upon which this Agreement is based, or for Respondent's violation of any applicable provision of law.
20. If payment of any stipulated penalty is not received by the due date, as provided for in paragraph 19.c., above, pursuant to 31 U.S.C. § 3717, interest will accrue from the due date through the date of payment, at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys' fees. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such non-payment penalty charge on the debt will accrue from the date the penalty payment becomes due and is not paid, in accordance with 4 C.F.R. §§ 102.13(d) and (e).
21. Public Statements. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 311(j) of the Clean Water Act and the Spill Prevention, Control, and Countermeasures regulations at 40 C.F.R. Part 112."
22. This CAFO 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, nor shall it be construed to constitute EPA approval of any equipment or technology purchased in connection with the SEP undertaken pursuant to this Agreement.
23. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 311(b)(6) of the Clean Water Act, 33 U.S.C. §1321(b)(6), for the violations alleged in the Complaint. Nothing in this Agreement is intended to be, nor shall be, construed to operate in any way to resolve any criminal liability of Respondent. Compliance with this Agreement 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.
24. Each undersigned representative of the parties to this Agreement certifies that she or he is fully authorized by the party represented, to enter into the terms and conditions of this Agreement and to execute and legally bind that party to it.
25. The provisions of this Agreement shall be binding upon the Respondent, its officers, directors, agents, servants, authorized representatives and successors or assigns.
26. Each party shall bear its own costs and attorneys fees in connection with the action

resolved by this Agreement.

27. Respondent consents to service upon it by delivery of a copy of this Agreement by an EPA employee other than the Regional Hearing Clerk.

RESPONDENT:

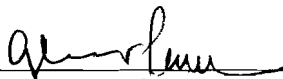
BY: Chip Ziegler 3/18/09
SIGNATURE DATE
CHIP ZIEGLER
NAME (Please print)
EXECUTIVE VICE PRESIDENT
TITLE (Please print)

COMPLAINANT:

Walter Mugdan 3/23/09
WALTER MUGDAN DATE
Director, Emergency and Remedial Response Division
United States Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

IV. Final Order

The Director of the Emergency and Remedial Response Division of the U.S. Environmental Protection Agency, Region 2, ratifies the foregoing Consent Agreement. The Agreement entered into by the parties is hereby approved, incorporated herein, and issued as an Order. The effective date of this Order shall be the date of filing with the Regional Hearing Clerk, U.S. EPA Region 2, New York, New York.



GEORGE PAVLOU
Acting Regional Administrator
United States Environmental Protection Agency - Region 2
290 Broadway
New York, New York 10007

3/25/09

DATE

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2**

IN THE MATTER OF

Ziegler Chemical & Mineral Corporation
366 North Broadway, Suite 210
Jericho, New York 11753

Respondent

Proceeding Pursuant to §311(b)(6) of the
Clean Water Act, 33 U.S.C. §1321(b)(6).

CONSENT AGREEMENT
AND
FINAL ORDER

Docket No. CWA-02-2008-3801

CERTIFICATE OF SERVICE

I certify that, on the date noted below, I caused to be mailed, by certified mail, return-receipt-requested, a copy of this "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

Ziegler Chemical & Mineral Corporation
366 North Broadway, Suite 210
Jericho, New York 11753

I further certify that, on the date noted below, I caused to be mailed, by EPA internal mail (pouch), the original and a copy of this "CONSENT AGREEMENT AND FINAL ORDER" to the following person at the address listed below:

Regional Hearing Clerk
U.S. Environmental Protection Agency
290 Broadway, 17th floor
New York, New York 10007-1866

MAR 26 2009

Date

Ana Madera
Signature

Ana Madera
Print Name

Branch Secretary
Title

Attachment A

Ziegler Chemical & Mineral Corp. Piscataway, NJ

Compliance Actions

Compliance Dates

1. Revise and Certify SPCC Plan to address all requirements of 40 CFR Part 112 Completed & On-going

2. Instruct personnel in the operation and maintenance of equipment to prevent discharges, discharge procedure protocols, applicable pollution control laws, rules and regulations, general facility operations and the contents of the SPCC Plan. Completed & On-going

3. Conduct inspections and tests in accordance with written procedures, and maintain documentation of the results thereof with the SPCC plan for a period of three years. Completed & On-going

4. Conduct spill prevention briefings for oil-handling personnel at least once a year and documented appropriately. Completed & On-going

5. Provide bulk storage container installations with a secondary means of containment for the entire capacity of the largest single container plus sufficient freeboard to contain precipitation.
 - a. Tanks #21 through #26 June 30, 2009

 - b. Tanks and stills located near the compressor room (1-3, 6, 8-16, 5S, 6S, and 10S) December 30, 2009

6. Provide secondary containment that is sufficiently impervious to contain discharged oil. June 30, 2009

7. In addition to visual inspection, conduct another testing technique such as hydrostatic testing, radiographic testing, ultrasonic testing, acoustic emissions testing, or another system of non-destructive shell testing. June 30, 2010

8. Provide fail-safe engineering to avoid overfilling bulk storage tanks. June 30, 2010

9. Promptly correct visible discharges which result Completed

in a loss of oil from the container, and remove accumulations of oil in diked areas.

10. Inspect all aboveground valves and pipelines on a regular basis.

Completed and On-going

11. Provide notice to vehicles entering the facility not to endanger aboveground piping or other oil transfer operations.

Completed and On-going