



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

NOV 20 2008

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

H. William Wells, Senior, V.P. Manufacturing
ACH Food Companies, Inc.
710 North Mattis Avenue
Champaign, IL 64821

Re: ACH Food Companies, Inc., Champaign, Illinois, Consent Agreement and Final Order
Docket Nos. CERCLA-05-2008-0008, EPCRA-05-2008-0013, MM-05-2008-0003

Dear Mr. Wells:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on NOV 20 2008.

Please pay the CERCLA civil penalty in the amount of \$15,716.00 in the manner prescribed in paragraph 10, and reference you check with the billing document number 2750930B003 and the docket number CERCLA-05-2008-0008.

Please pay the EPCRA civil penalty in the amount of \$31,431.00 in the manner prescribed in paragraph 11, and reference you check with the billing document number 2750944E004 and the docket number EPCRA-05-2008-0013.

Your payments are due on DEC 22 2008 [within 30 days of filing date].

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Thomas Kenney, Associate Regional Counsel, at (312) 886-0708. Thank you for your assistance in resolving this matter.

Sincerely yours,

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

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

RECEIVED
NOV 20 2008

REGIONAL HEARING CLERK
ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)
)
)
)
ACH Food Companies, Inc.)
Champaign, Illinois,)
)
)
Respondent.)
_____)

Docket No. CERCLA-05-2008-0008, EPCRA
05-2008-0013, MM-05-2008-0003

Proceeding to Assess a Civil Penalty Under
Section 109(b) of the Comprehensive
Environmental Response, Compensation, and
Liability Act, and Section 325(b)(2) of the
Emergency Planning and Community Right-
to-Know Act of 1986

Consent Agreement and Final Order

1. The Complainant is, by lawful delegation, the Chief, Emergency Response Branch 2, United States Environmental Protection Agency (U.S. EPA), Region 5.
2. On May 22, 2008, U.S. EPA filed the Complaint in this action against Respondent, ACH Food Companies, Inc. The Complaint alleges that Respondent violated Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9603(a), by failing to immediately notify the National Response Center of a release which occurred at its facility in Champaign, Illinois on September 28, 2005; and violated Section 304(a) of Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004(a), by failing to immediately notify the Illinois State Emergency Response Commission (SERC) of the September 28, 2005 release and by failing to immediately notify the community emergency coordinator for the local emergency planning committee (LEPC) for an area likely to be affected by the release. The proposed penalty in the Complaint was \$72,537.00.
3. On June 24, 2008, Respondent filed an Answer and requested a hearing under Section 325(b)(1)(B) of EPCRA, 42 U.S.C. § 11045(b)(1)(B), and Section 109(a)(2)(B) of CERCLA, 42 U.S.C. § 9609(a)(2)(B).
4. On June 30, 2008, Chief Administrative Law Judge Biros issued a letter soliciting

interest in applying Alternative Dispute Resolution (ADR) to this case. The parties agreed to participate in ADR and Chief Administrative Law Judge Biros issued an order initiating ADR on July 15, 2008. In parallel with the ADR process, the parties continued settlement negotiations and this settlement resulted.

Stipulations

5. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the other allegations, including the specific factual allegations, in the Complaint other than those it admitted in its Answer.

6. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).

7. The parties consent to the terms of this CAFO.

8. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

9. In consideration of Respondent's cooperation, return to compliance, and willingness to quickly resolve this matter, Complainant has determined that an appropriate civil penalty to settle this action is \$47,147.00.

10. Within 30 days after the effective date of this CAFO, Respondent must pay a \$15,716.00 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:

for checks sent by regular U.S. postal service

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

for checks sent by express mail

U.S. Bank
Government Lockbox 979076 U.S. EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: In the Matter of ACH Food Companies, Inc., the docket number of this CAFO (CERCLA-05-2008-0008) and the billing document number _____

2250930B003

11. Within 30 days after the effective date of this CAFO, Respondent must pay a \$31,431.00 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

for checks sent by regular U.S. postal service

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

for checks sent by express mail

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: In the Matter of ACH Food Companies, Inc., the docket

number of this CAFO (EPCRA-05-2008-0013) and the billing document number _

2750.944E004

12. A transmittal letter, stating Respondent's name, the 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 checks and transmittal letter to:

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

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

Thomas J. Kenney, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

14. 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.

15. 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

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

17. 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.

18. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304 of EPCRA, 42 U.S.C. § 11004.

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

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

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

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

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

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

ACH Food Companies, Inc., Respondent

11/6/08
Date

H. William Wells
H. WILLIAM WELLS
SR. V.P. MANUFACTURING
ACH FOOD COS., INC.

OK
BLLK
11/6/08

U.S. Environmental Protection Agency, Complainant

11/14/08
Date

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

11/14/08
Date

Richard C. Karl
Richard C. Karl, Director
Superfund Division

In the Matter of:

ACH Food Companies, Inc.

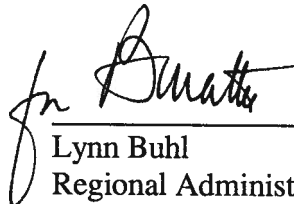
Docket No. CERCLA-05-2008-0008, EPCRA-05-2008-0013, MM-05-2008-0003

In the Matter of:
ACH Food Companies, Inc.
Docket No. CERCLA-05-2008-0008, EPCRA-05-2008-0013, MM-05-2008-0003

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. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

11-19-08
Date



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

In the Matter of:

ACH Food Companies

Docket No. CERCLA-05-2008-0008, EPCRA-05-2008-0013, MM-05-2008-0003

Certificate of Service


I, James Entzminger, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number **CERCLA-05-2008-0008, EPCRA-05-2008-0013, MM-05-2008-0003** 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 ACH Food Companies' Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Bryan E. Keyt
Bryan Cave LLP
161 North Clark Street
Suite 4300
Chicago, Illinois 60601

ACH Food Companies
710 North Mattis Avenue
Champaign, IL 61821

Barbara A. Gunning, Administrative Law Judge
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Mail Code: 1900L
Washington, DC 20460

on the 20 day of November, 2008


James Entzminger
U.S. Environmental Protection Agency
Region 5

RECEIVED
NOV 20 2008
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY.