



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

SEP 08 2015

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Les Oakes, Esq.
King & Spalding LLP
1180 Peachtree Street N.E.
Atlanta, Georgia 30309

Re: DSM Chemicals North America, LLC – Augusta, GA
Consent Agreement and Final Order
Docket Number: EPCRA-04-2015-2035(b)

Dear Mr. Oakes:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

Please refer to Section V of the CAFO for penalty information and payment requirements. To ensure proper processing, the Respondent's name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency. Where used in the document "SEC" refers to the Securities and Exchange Commission.

Should you or your client have any questions about this matter or your client's compliance status in the future, please contact Ms. Lynda Crum of the EPA Region 4 staff at (404) 562-9524.

Sincerely,

Anthony G. Toney
Chief

Chemical Safety & Enforcement Branch

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:)
)
DSM Chemicals North America, LLC) Docket Number: EPCRA-04-2015-2035(b)
)
Respondent.)
_____)

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CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to 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 and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is DSM Chemicals North America, LLC.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA and under EPCRA to the Regional Administrators by EPA Delegations 14-31 and 22-3-A, both dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004, and the authority under EPCRA by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent is DSM Chemicals North America, LLC, a corporation doing business in the State of Georgia.

5. Respondent is a "person" and is the "owner or operator" of a "facility" as those terms are defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), respectively.

6. Respondent's facility is located at 1 Columbia Nitrogen Road, Augusta, Georgia.

III. EPA's Allegation of Violations

Violation of Section 103(a) of CERCLA

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the RQ.

9. Nitrogen oxide is a "hazardous substance" as that term is defined by Section 101(14), 42 U.S.C. § 9601(14), with an RQ of 1000 pound, as specified in the final rule published in the Federal Register Volume 71, Number 192 for nitrogen oxide releases from combustion processes.

10. On November 12, 2013, a release of nitrogen oxide above the RQ occurred at the facility.

11. Respondent was in charge of the facility on November 12, 2013.

12. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the NRC as soon as Respondent had knowledge of the releases of nitrogen oxide in an amount equal to or greater than its RQ at Respondent's facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

13. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of

CERCLA, 42 U.S.C. § 9603(a), that occurred after January 12, 2009. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

Violations of Section 304(a) EPCRA

14. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) and the regulations found at 40 C.F.R. § 355, Subpart C, require the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) when there has been a release of a CERCLA hazardous substance or an EPCRA extremely hazardous substance in an amount equal to or greater than the RQ. Section 304(a) does not apply to any release which results in exposure solely to persons within the site or sites on which a facility is located.

15. Respondent was the owner or operator of the facility on November 12, 2013.

16. At all times relevant to this matter, the facility produced, used, or stored a "hazardous chemical" as defined under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e) and under 29 C.F.R. § 1910.1200(c).

17. Nitrogen oxide is an "extremely hazardous substance" as that term is defined by Section 329(3) of EPCRA, 42 U.S.C. § 11049(3), with an RQ of 1000 pounds, as specified in the final rule published in the Federal Register Volume 71, Number 192 for nitrogen oxide releases from combustion processes.

18. On November 12, 2013, a release of nitrogen oxide above the RQ occurred at the facility. EPA alleges that the release resulted in the potential for exposure to persons beyond the site or sites on which the facility is located.

19. Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of nitrogen oxide in an amount equal to or greater than the RQ at Respondent's facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

20. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than \$37,500 for each violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) that occurred after January 12, 2009. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

IV. Consent Agreement

21. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

22. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

23. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

24. Respondent agrees to complete the Supplemental Environmental Project (SEP) as set forth in this CAFO.

25. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of EPCRA and CERCLA.

26. Compliance with this CAFO shall resolve the allegations of violations contained herein. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA, CERCLA or other applicable laws and regulations.

27. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA and EPCRA.

V. Final Order

28. Respondent shall pay a civil penalty of **FOURTEEN THOUSAND, SIXTY-THREE DOLLARS (\$14,063)** for the CERCLA violation alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

29. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

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

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979076
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
(314) 425-1818

The check shall reference on its face the name and the Docket Number of the CAFO.

30. Respondent shall pay a civil penalty of **TWENTY EIGHT THOUSAND, ONE HUNDRED TWENTY-FIVE DOLLARS (\$28,125)** for the EPCRA violations alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

31. Respondent shall pay the penalty by forwarding a cashier's or certified check payable to "Treasurer, United States of America," to one of the following addresses:

BY MAIL

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

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101
(314) 425-1818

The check shall reference on its face the name and the Docket Number of the CAFO.

32. At the time of payment, Respondent shall send a separate copy of each check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Eddie Chow
U.S. EPA, Region 4
Chemical Management Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

33. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

VI. Supplemental Environmental Project

34. Respondent shall undertake and complete the following Emergency Planning and Preparedness project within 45 days of the effective date of this CAFO. Respondent shall expend no less than a total of **ONE HUNDRED FIFTY-EIGHT THOUSAND, FIVE HUNDRED SEVENTY-EIGHT DOLLARS (\$158,578)**, to include **SIXTY-SEVEN THOUSAND THREE HUNDRED SIXTY FOUR DOLLARS (\$67,364)** for the purchase of equipment for donation to the Merriwether Fire Department, and **NINETY-ONE THOUSAND TWO HUNDRED AND FOURTEEN DOLLARS (\$91,214)** for the purchase of equipment for donation to the Hephzibah Fire Department, as follows:

Merriwether Fire Department:

<u>Quantity</u>	<u>Description</u>
1	High Pressure Compressor Purification System with Storage, Fill Station
5	Scott Pak X3 CGA Stand Harness 4500 Pass 30 Min Carbon Cyl AV3000 HT Mask

Hephzibah Fire Department:

<u>Quantity</u>	<u>Description</u>
2	Akron: 3343 Mercury Quick Attack Monitor Package with Nozzle, and Bracket – w/Bracket, Strap, 4445 Nozzle w/2420 Triple Stacked Tips
1	Forcible Entry Door Simulator
2	Partner: K-12 FD Fire/Rescue Saw – Saw Package w/12” Blade
2	MSA: ALTAIR 5X Multigas Detector with XCell Sensor Technology – Kit 6
16	Morning Pride Structural Firefighting Bunker Gear, NFPA – Tan Coat
16	Morning Pride Structural Firefighting Bunker Gear, NFPA – Tan Pants
1	Tempest Technology: Blackout Smoke Machine 110v
16	XPR Series Motorola XPR 7550 VHF Portable Radio Units Includes Charger and Programming
16	Motorola Remote Speaker Mic
1	Paratech: 92 Ton “Rescue Engine or Truck” Air Lifting Bag Set, Includes 9 Bags – 22-889092
1	Paratech: Master Control Package – 22-890300

This CAFO shall not be construed to constitute EPA’s endorsement of the equipment or technology to be purchased by Respondent in connection with the SEP undertaken pursuant to this Agreement.

35. Respondent certifies that:

a. all cost information provided to the EPA in connection with the EPA's approval of the SEP described in paragraph 34 is complete and accurate and that Respondent in good faith estimates that the cost to implement the SEP is **\$158,578**.

b. the SEP is not a project that Respondent was planning or intending to construct, perform, or implement other than in settlement of the claims resolved in this CAFO.

36. Respondent also certifies that:

a. It is not a party to any open federal financial assistance transaction that is funding or could fund the same activity as the SEP described in paragraph 34; and

b. It has inquired of the Merriwether Fire Department and the Hephzibah Fire Department whether the Merriwether Fire Department and the Hephzibah Fire Department is a party to an open federal financial assistance transaction that is funding or could fund the same activity as the SEP and has been informed by the Merriwether Fire Department and the Hephzibah Fire Department that neither is a party to such a transaction.

37. Respondent further certifies that, as of the date this CAFO is signed, it is not required to perform or develop any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant, or as injunctive relief awarded in any other action in any forum. Respondent further certifies that, as of this date, it has not received and is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind, and Respondent will not receive reimbursement for any portion of this SEP from another person or entity.

38. Respondent agrees that in order to receive credit for the SEP, it must fully and timely complete the SEP project in accordance with Paragraph 34. If Respondent does not fully and timely complete the SEP in accordance with Paragraph 34, it shall be required to pay stipulated penalties pursuant to Paragraph 39.

39. If Respondent fails to timely and fully complete any part of the SEP, including failure to spend the minimum amount of **ONE HUNDRED FIFTY-EIGHT THOUSAND, FIVE HUNDRED SEVENTY-EIGHT DOLLARS (\$158,578)** in accordance with Paragraph 34, Respondent shall pay to the United States, a stipulated penalty of the difference between **\$158,578** and the actual SEP expenditure.

40. For purposes of Paragraphs 38 and 39, the determination as to whether Respondent has fully and timely completed the SEP shall be in the sole discretion of EPA.

41. Any public statement, oral or written, by Respondent making any 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 violation of Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA).”

42. No later than sixty (60) calendar days after the effective date of this CAFO, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Eddie Chow at the address provided above in Paragraph 32. The Report shall include the following:

a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and

(b) copies of appropriate documentation, including invoice and receipts, showing a total expenditure of no less than **\$158,578**, was spent on the Emergency Planning and Preparedness SEP described in Paragraph 34.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

43. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

44. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth in the written demand from EPA.

45. For Federal Income Tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

46. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

47. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

48. This CAFO shall be binding upon the Respondent, its successors and assigns.

49. The following individual is authorized to receive service for EPA in this proceeding:

Verne H. George
U.S. EPA, Region 4
Chemical Management Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-8988

50. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

THIS SECTION INTENTIONALLY LEFT BLANK

VII. Effective Date

51. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

DSM Chemicals North America, LLC

By: William Powers (Signature) Date: 8-4-15
Name: William Powers (Typed or Printed)
Title: Vice President of Operations (Typed or Printed)

U.S. Environmental Protection Agency

By: Beverly H. Banister Date: 8-12-15,
Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 3rd day of September, 2015

Tanya Floyd
Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of, DSM North America, LLC, Docket Number: EPCRA 04-2015-2035(b), on the parties listed below in the manner indicated:

Verne H. George (Via EPA's internal mail)
U.S. EPA, Region 4
Air, Pesticides and Toxics Management Division
61 Forsyth Street
Atlanta, GA 30303

Lynda Crum (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA, Region 4
Office of Environmental Accountability
61 Forsyth Street
Atlanta, GA 30303

Les Oakes (Certified Mail - Return Receipt Requested)
King & Spalding LLP
1180 Peachtree Street N.E.
Atlanta, GA 30309

Date: 9-8-15



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency, Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511