



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

DEC 20 2006

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Lawrence McGreenera, Site Director
Alpharma Inc.
400 State Street
Chicago Heights, IL 60411

Re: Alpharma Inc., Chicago Heights, Illinois, Consent Agreement and Final Order
Docket No. CERCLA-05-2007-0005

Dear Mr. McGreenera:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on December 20, 2006.

Please pay the civil penalty in the amount of \$5,000 in the manner prescribed in paragraphs 26 or 28, and reference your check with the number BD 2750730B004 and docket number CERCLA-05-2007-0005. Your payment is due on January 19, 2007 (within thirty calendar days of the 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 Mary Fulghum, Associate Regional Counsel, at (312) 886-4683. Thank you for your assistance in resolving this matter.

Sincerely yours,

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

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Mary Fulghum (w/ enclosure)
Office of Regional Counsel
U.S. EPA Region 5

Jon England (w/ enclosure)
IL SERC

Marcy Toney (w/ enclosure)
Regional Judicial Officer

Desiree K. Holzlein, Commercial Counsel (w/ enclosure)
Alpha Pharma Inc.
One Executive Drive
Fort Lee, NJ 07024 (certified)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:

Alpharma Inc.
Chicago Heights, Illinois

Respondent.

) Docket No. CERCLA-05-2007-0005
)
) 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.

BRW

2006 DEC 20 PM 3:53

REGIONAL SUPERVISOR
CLEM

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 (2005).

2. The Complainant is, by lawful delegation, the Chief, Chemical Emergency Preparedness and Prevention Section, Emergency Response Branch, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

3. Respondent is Alpharma Inc., a corporation, doing business in the State of Illinois.

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) (2005).

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 entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Alpharma Inc. admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Alpharma Inc. 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. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), the U.S. EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation 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

11. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).
12. At all times relevant to this CAFO, Respondent was an owner or operator of the Facility located at 400 State Street, Chicago Heights, Illinois 60411 (Facility).
13. At all times relevant to this CAFO, Respondent was in charge of the Facility.
14. Respondent's Facility consists of building, structure, installation, equipment, pipe or pipeline, storage container, or any site or area where a hazardous substance has been deposited, stored, 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. Sulfuric acid (CAS #7664-93-9) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C § 9601(14).
17. Sulfuric acid (CAS #7664-93-9) has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.
18. On October 31, 2005, at or about 9:00 a.m., Respondent discovered a release from Respondent's Facility of sulfuric acid (the Release).
19. In a 24 hour time period, the Release of sulfuric acid exceeded 1,000 pounds.
20. During the Release, approximately 13,277 pounds spilled, leaked, pumped, poured, emitted, emptied, discharged, or escaped into the land surface.
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 notified the NRC of the Release on October 31, 2005, at 3:58 p.m.

23. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the Release.

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

Civil Penalty

25. In consideration of Respondent's agreement to perform a supplemental environmental project, cooperation, and willingness to resolve the matter, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$5,000.

26. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,000 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:

U.S. EPA - Region 5
ATTN: Superfund Receivable
P.O. Box 371099M
Pittsburgh, PA 15251-7531

The check must note the case title of this matter: Alpharma Inc., the docket number of this CAFO, and the billing document number 2750730B004.

27. A transmittal letter, stating 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 check and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard.
Chicago, IL 60604-3511

Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard.
Chicago, IL 60604-3511

James Entzminger, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3511

Mary Fulghum, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3511

28. Alternatively, Respondent may pay by wire transfer to Federal Reserve Bank of New York, Routing/ABA Number 021030004 for Account Number 68010727, U.S. EPA. The wire payment must have the billing document number 2750730B004.

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

30. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 47, below, 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. 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 six percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO has been entered by the Regional Hearing Clerk.

Supplemental Environmental Project

32. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by:

- a. purchasing and installing replacement sulfuric acid piping constructed of alloy 20 stainless steel.
- b. Purchasing and installing a remote monitoring and alarm system for the sulfuric acid tank.

33. At its Chicago Heights, Illinois facility, Respondent must complete the SEP as follows:

- a. Within 25 weeks of the effective date of the CAFO, Respondent will purchase and install the replacement sulfuric acid piping. The new piping will be constructed of alloy 20 stainless steel.
- b. Within ten weeks of the effective date of the CAFO, Respondent will purchase and install a remote monitoring and alarm system for the sulfuric acid tank.

34. Respondent must spend at least \$24,838 to purchase and install the sulfuric acid piping replacement, and \$10,375 to purchase and install the remote monitoring and alarm system.

35. Respondent must continuously use or operate the equipment installed as the SEP for one year following its installation.

36. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this

CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

37. U.S. EPA may inspect the facility at any time to monitor Respondent's compliance with this CAFO's SEP requirements.

38. Respondent must maintain copies of the underlying data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any underlying data to U.S. EPA within seven days of U.S. EPA's request for the information.

39. Within 29 weeks of the effective date of the CAFO, Respondent must submit a SEP completion report to U.S. EPA. This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

40. If an event occurs which causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify U.S. EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay, and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid or minimize any delay. If Respondent fails to notify U.S. EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.

c. If U.S. EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, U.S. EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.

d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

41. Respondent must submit all notices and reports required by this CAFO by first class mail to:

James Entzminger (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604-3511

42. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

43. Following receipt of the SEP completion report described in paragraph 39 above, U.S. EPA must notify Respondent in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 45.

44. If U.S. EPA exercises option b. above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 45 below.

45. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. If Respondent has spent less than the amount set forth in paragraph 34, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 34.

b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$4,947.40, in addition to any penalty required under Subparagraph a, above.

c. If Respondent halts or abandons work on the SEP, the Respondent must pay a stipulated penalty of \$12,368.50, in addition to the penalty required under Subparagraph a, above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.

d. If Respondent fails to comply with the schedule in paragraph 33 for implementing the SEP, fails to submit timely the SEP completion report required in paragraph 39, Respondent must pay Stipulated Penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1st through 14th day
\$1,000	15th through 30th day
\$1,500	31st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone, until it achieves compliance with the milestone. The total of all stipulated penalties shall not exceed \$23,340.00.

46. U.S. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind Respondent.

47. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 26 or 28, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

48. Any public statement that Respondent makes referring to the SEP must include the following language, "Respondent undertook this project under the settlement of the United States Environmental Protection Agency's enforcement action against Respondent for violations of CERCLA Section 103."

49. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this Agreement.

Emergency Response Plan

50. Within 30 days of the effective date of this CAFO, Respondent shall submit to U.S. EPA a revised Facility's Emergency Response Plan that:

- a. Contains consistent internal references in text, tables and maps to the names and locations of hazardous substance storage areas;
- b. Consistently emphasizes that Respondent must notify the State Emergency Response Commission, the Local Emergency Planning Committee and the National Response Center whenever on the basis of actual or constructive knowledge, it is determined that a release of a hazardous substance has occurred;
- c. Explains that there is no penalty if Respondent mistakenly notifies State Emergency Response Commission, the Local Emergency Planning Committee or the National Response Center that a release of a reportable quantity has occurred but later determines that a release of a reportable quantity did not actually occur;
- d. Includes a site map that clearly identifies the location of storage tanks containing hazardous substances;
- e. Includes nitric acid in its list of extremely hazardous substances (designated by 40 CFR Part 355 Appendices A and B) along with the associated reportable quantity, threshold planning quantity and location; and
- f. Identifies reportable quantities of CERCLA hazardous substances in both pounds and gallons.

General Provisions

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

52. 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.

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

54. This CAFO shall not be construed to create any rights in, or grant any cause of action to, any person not a signatory to this CAFO. The preceding sentence shall not be

construed to waive or nullify any rights that any person not a signatory to this CAFO may have under applicable law.

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

56. The terms of this CAFO bind U.S. EPA, Respondent and their respective successors and assigns.

57. 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.

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

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

Consent Agreement and Final Order
IN THE MATTER OF:

Alpharma Inc.
400 State Street
Chicago Heights, Illinois
Docket No. CERCLA-05-2007-0005 *BBW*

U.S. Environmental Protection Agency, Complainant

Date: 12/14/06

By: *Mark J. Horwitz*

Mark J. Horwitz, Chief

Chemical Emergency Preparedness

and Prevention Section

Emergency Response Branch

Superfund Division

U.S. EPA Region 5

Date: 12-15-06

By: *Richard C. Karl*

Richard C. Karl, Director

Superfund Division

U.S. EPA Region 5

Consent Agreement and Final Order

IN THE MATTER OF:

Alpharma Inc.

400 State Street

Chicago Heights, Illinois

Docket No. CERCLA-05-2007-0005

low

Alpharma Inc., Respondent

Date: 12 Dec 2006

Signature: _____



Print Name: _____

Carol Wren

(DKH)

Title: _____

President - AH

Alpharma Inc.

Consent Agreement and Final Order
IN THE MATTER OF:

Alpharma Inc.

400 State Street

Chicago Heights, Illinois


Docket No. CERCLA-05-2007-0005

JBW

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. IT IS SO ORDERED.

Date: 12-26-06

f-By: 

Mary A. Gade
Regional Administrator
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

Certificate of Service

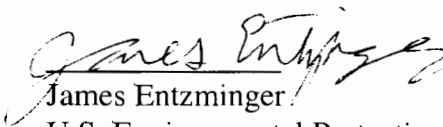
I, James Entzminger, certify that I hand delivered the original of the Consent Agreement and Final Order, docket number CERCLA-05-2007-0005 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy, via interoffice mail, on the Regional Judicial Officer, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to Alharma Inc.'s Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Desiree K. Holzlein, Commercial Counsel
Alharma Inc.
One Executive Drive
Fort Lee, NJ 07024

Lawrence McGrenera, Site Director
Alharma Inc.
400 State Street
Chicago Heights, IL 60411

REGIONAL HEARING CLERK
2007 DEC 20 PM 3:53

on the 20 day of December, 2006.


James Entzminger
U.S. Environmental Protection Agency
Region 5