



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

AUG 10 2018

REPLY TO THE ATTENTION OF:

ELECTRONIC SERVICE  
VIA E-MAIL

Dennis Quam  
Vice President – Human Resources  
The Viking Corporation  
210 North Industrial Park Drive  
Hastings, Michigan 49058

Re: The Viking Corporation, Hastings, Michigan, Consent Agreement and Final Order  
Docket No. EPCRA-05-2018-0011

Dear Mr. Quam:

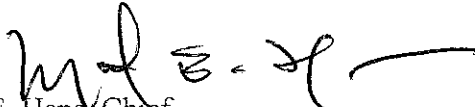
Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on August 10, 2018.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$13,462 in the manner prescribed in paragraph 61, and reference your check with the docket number EPCRA-05-2018-0011.

Your payment is due on September 10, 2018.

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 Cathleen Martwick, Associate Regional Counsel, at (312) 886-7166. Thank you for your assistance in resolving this matter.

Sincerely,

  
Michael E. Hans, Chief  
Chemical Emergency Preparedness  
and Prevention Section

Enclosure

cc: Captain Christopher A. Kelenske, Chairperson (w/enclosure)  
State Emergency Response Commission  
EMHSD/Michigan Department of State Police  
Post Office Box 30634  
Lansing, Michigan 48909

Michael Young (w/enclosure)  
State Emergency Response Commission  
Michigan Department of Environmental Quality  
Post Office Box 30457  
Lansing, Michigan 48909

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5

In the Matter of:

The Viking Corporation  
Hastings, Michigan

Respondent.



Docket No. EPCRA-05-2018-0011

Proceeding to Assess a Civil Penalty Under  
Section 325(c)(1) of the Emergency Planning  
and Community Right-to-Know Act of 1986

**Consent Agreement and Final Order**  
**Preliminary Statement**

1. This is an administrative action commenced and concluded under Section 325(c)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(c)(1), 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 Emergency Response Branch 1, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is The Viking Corporation, a corporation doing business in the State of Michigan.

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 the terms of the 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 312(a) of EPCRA, 42 U.S.C. § 11022(a), and its implementing regulations at 40 C.F.R. Part 370, require the owner or operator of a facility, which is required by the Occupational Safety and Health Act (OSHA) to prepare or have available a material safety data sheet (MSDS) or safety data sheet (SDS) for a hazardous chemical, to submit to the state emergency response commission (SERC), community coordinator for the local emergency planning committee (LEPC) and fire department with jurisdiction over the facility by March 1, 1988, and annually thereafter, an emergency and hazardous chemical inventory form (Tier I or Tier II as described in 40 C.F.R. Part 370). The form must contain the information required by Section 312(d) of EPCRA, covering all hazardous chemicals present at the facility at any one time during the preceding year in amounts equal to or exceeding 10,000 pounds and all extremely hazardous chemicals present at the facility at any one time in amounts equal to or greater than 500 pounds or the threshold planning quantity designated by U.S. EPA at 40 C.F.R. Part 355, Appendices A and B, whichever is lower.

10. Section 312(a) of EPCRA, 42 U.S.C. § 1022(a), assists state commissions, local committees, and fire departments in planning for emergencies and makes information on

chemical presence and hazards available to the public. A delay in reporting could result in harm to human health and the environment.

11. Under 29 C.F.R. § 1910.1200(b)(1), all employers are required to provide information to their employees about the hazardous chemicals to which they are exposed including, but not limited to, MSDSs or SDSs.

12. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 C.F.R. § 1910.1200(c).

13. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

14. Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of EPCRA Section 312. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$32,500 per day of violation for each violation that occurred after March 15, 2004 through January 12, 2009, to \$37,500 per day of violation for each violation that occurred after January 12, 2009 through November 2, 2015, The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015), amending 28 U.S.C. § 2461 note, and the implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$53,907 per day of violation for each violation that occurred after November 2, 2015 and for which penalties are assessed on or after August 1, 2016 but before January 15, 2017, to \$54,789 per day of violation that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2017 but before January 15, 2018, and to \$55,907 per day of violation for

each violation that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018.

### **Factual Allegations and Alleged Violations**

15. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at 210 North Industrial Park Drive, Hastings, Michigan (facility).

17. At all times relevant to this CAFO, Respondent was an employer at the facility.

18. Respondent’s facility consists of buildings, equipment, structures and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

19. Sulfuric acid is classified as a physical or health hazard, or hazard not otherwise classified.

20. Sulfuric acid (CAS #7664-93-9) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

21. Sulfuric acid (CAS #7664-93-9) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

22. Sulfuric acid (CAS #7664-93-9) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.

23. During at least one period of time in calendar year 2015, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

24. During at least one period of time in calendar year 2016, sulfuric acid was present at the facility in an amount equal to or greater than the minimum threshold level.

25. OSHA, 29 U.S.C. §§ 651 *et seq.*, and the regulations found at 29 C.F.R. § 1910.1200(b)(1), require Respondent to prepare, or have available, an MSDS for sulfuric acid at the facility.
26. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid on or before March 1, 2016, for calendar year 2015.
27. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including sulfuric acid on or before March 1, 2017, for calendar year 2016.
28. Nitric acid is classified as a physical or health hazard, or hazard not otherwise classified.
29. Nitric acid (CAS #7697-37-2) is a “hazardous chemical” within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).
30. Nitric acid (CAS #7697-37-2) is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).
31. Nitric acid (CAS #7697-37-2) has a minimum threshold level of 500 pounds, as provided in 40 C.F.R. Part 370.
32. During at least one period of time in calendar year 2015, nitric acid was present at the facility in an amount equal to or greater than the minimum threshold level.
33. OSHA, 29 U.S.C. §§ 651 *et seq.*, and the regulations found at 29 C.F.R. § 1910.1200(b)(1), require Respondent to prepare, or have available, an MSDS for nitric acid at the facility.

34. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including nitric acid on or before March 1, 2016, for calendar year 2015.

35. Lead-acid batteries are classified as a physical or health hazard, or hazard not otherwise classified.

36. Lead-acid batteries are a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

37. Lead-acid batteries contain sulfuric acid and lead.

38. Lead has a minimum threshold level of 10,000 pounds, as provided in 40 C.F.R. Part 370.

39. During at least one period of time in calendar year 2015, lead was present at the facility in an amount equal to or greater than the minimum threshold level.

40. During at least one period of time in calendar year 2016, lead was present at the facility in an amount equal to or greater than the minimum threshold level.

41. OSHA, 29 U.S.C. §§ 651 *et seq.*, and the regulations found at 29 C.F.R. § 1910.1200(b)(1), require Respondent to prepare, or have available, an MSDS for lead-acid batteries at the facility.

42. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including lead-acid batteries on or before March 1, 2016, for calendar year 2015.

43. Section 312 of EPCRA required Respondent to submit to the SERC, LEPC and fire department with jurisdiction over the facility, a completed emergency and hazardous chemical inventory form including lead-acid batteries on or before March 1, 2017, for calendar year 2016.



44. At all times relevant to this CAFO, the Michigan SERC was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

45. At all times relevant to this CAFO, the Barry County LEPC was the LEPC for Barry County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

46. At all times relevant to this CAFO, the Hastings Fire Department was the fire department with jurisdiction over the facility.

**Count 1** (Past Year)

47. Complainant incorporates paragraphs 1 through 46 of this CAFO as if set forth in this paragraph.

48. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, nitric acid, fomtec AFFF 3% s foam concentrate, fomtec ARC 3x3 s foam concentrate, and lead on September 5, 2017, for calendar year 2015.

49. Respondent submitted to the LEPC and the Hastings Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, nitric acid, fomtec AFFF 3% s foam concentrate, fomtec ARC 3x3 s foam concentrate, and lead on September 7, 2017, for calendar year 2015.

50. Each day Respondent failed to submit to the SERC, the LEPC, and the Hastings Fire Department, a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, nitric acid, and lead by March 1, 2016, for calendar year 2015 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 2** (EPCRA 312/SERC)

51. Complainant incorporates paragraphs 1 through 46 of this CAFO as if set forth in this paragraph.

52. Respondent submitted to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, fomtec AFFF 1% ultra lt foam concentrate, fomtec ARC 3x3 s foam concentrate, FM-200 fire extinguishing agent (r-227), and lead on September 6, 2017, for calendar year 2016.

53. Each day Respondent failed to submit to the SERC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, and lead by March 1, 2017, for calendar year 2016 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 3** (EPCRA 312/LEPC)

54. Complainant incorporates paragraphs 1 through 46 of this CAFO as if set forth in this paragraph.

55. Respondent submitted to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, fomtec AFFF 1% ultra lt foam concentrate, fomtec ARC 3x3 s foam concentrate, FM-200 fire extinguishing agent (r-227), and lead on September 7, 2017, for calendar year 2016.

56. Each day Respondent failed to submit to the LEPC a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, and lead by March 1, 2017, for calendar year 2016 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Count 4** (EPCRA 312/fire department)

57. Complainant incorporates paragraphs 1 through 46 of this CAFO as if set forth in this paragraph.

58. Respondent submitted to the Hastings Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, fomtec AFFF 1% ultra lt foam concentrate, fomtec ARC 3x3 s foam concentrate, FM-200 fire extinguishing agent (r-227), and lead on September 7, 2017, for calendar year 2016.

59. Each day Respondent failed to submit to the Hastings Fire Department a completed Emergency and Hazardous Chemical Inventory Form including sulfuric acid, and lead by March 1, 2017, for calendar year 2016 constitutes a separate violation of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

**Civil Penalty**

60. Complainant has determined that an appropriate civil penalty to settle this action is \$14,462 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, Respondent's agreement to perform a supplemental environmental project, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response Compensation and Liability Act, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

61. Within 30 days after the effective date of this CAFO, Respondent must pay a \$14,462 civil penalty for the EPCRA violations. Respondent must pay the penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York  
ABA No. 021030004  
Account No. 68010727  
33 Liberty Street  
New York, NY 10045  
SWIFT address: FRNYUS33

In the comment or description field of the electronic funds transfer, state the following: The Viking Corporation and the docket number of this CAFO.

62. Respondent must send a copy of the payment method to:

Regional Hearing Clerk (E-19J)  
U.S. EPA, Region 5  
77 West Jackson Blvd.  
Chicago, IL 60604

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

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

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

64. If Respondent does not timely pay the civil penalty or any stipulated penalties due under paragraph 80, 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.

65. 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.

#### **Supplemental Environmental Project**

66. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by donating firefighting foam and extinguishers to the local responders and not for profit organizations.

67. Respondent must complete the SEP as follows:

Within 30 days of the effective date of the CAFO, Respondent will donate a 1,000-liter IBC tote of AFFF 1% Ultra LT firefighting foam to the City of Hastings Fire Department, a 1,000-liter IBC tote of AFFF 1% Ultra LT firefighting foam to the Orangeville Township Fire Department, an 800-liter (in a 1,000-liter IBC tote) of AFFF 1% Ultra LT firefighting foam to the Prairieview Township Fire Department, a 1,000-liter IBC tote of AFFF 1% Ultra LT firefighting foam to the Cutlerville-Bryon Fire Department, a 1,000-liter IBC tote of AFFF 1% Ultra LT firefighting foam to the Dutton-Gaines Township Fire Department, and a 55-gallon drum of AFFF 1% AFFF firefighting foam to the Martin Township Fire Department.

68. Respondent must spend at least \$54,233 to donate the AFFF 1% Ultra LT firefighting foam described in paragraph 67.

69. If Respondent cannot spend \$54,233 on the equipment described in paragraph 67, Respondent will spend the remainder of the \$54,233 by donating and installing active fire

suppression systems for IT server racks at a total cost of \$10,305 within 90 days of the effective date of the CAFO; or donating and installing strike first kitchen class-k fire extinguishers at a total cost of \$6,080 within 90 days of the effective date of the CAFO; or donating and installing clean agent fire compartment extinguishers at a total cost of \$29,252 or some combination of the above within 180 days of the effective date of the CAFO. Further, Respondent shall notify U.S. EPA of such changes to the SEP donations and installations as soon as practicable and as part of the SEP completion report described in paragraph 75. Further, Respondent will not use any of the \$54,233 to install any clean agent fire compartment extinguishers at any of its facilities.

70. Respondent must not use any chemical that is more toxic or hazardous than identified in paragraph 67 or 69. Respondent must use safety data sheets to determine the chemical's toxic and hazardous characteristics.

71. Respondent certifies as follows:

- a. The Viking Corporation is not required to perform or develop the SEP by any law, regulation, order, or agreement (other than this CAFO) or as injunctive relief as of the date that I am signing this CAFO.
- b. The Viking Corporation has not received and will not receive credit for this SEP in any other enforcement action.
- c. The Viking Corporation and SEP recipients are not parties to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP.
- d. To the best of my knowledge and belief **after reasonable inquiry**, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to U.S. EPA within two years of the date that I am signing this CAFO (unless the project was barred from funding as statutorily ineligible). For purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee, or other mechanism for providing federal financial assistance whose performance period has not expired.
- e. All cost information provided to U.S. EPA in connection with U.S. EPA's approval of the SEP is complete and accurate, and The Viking Corporation in good faith estimates that the cost to implement the SEP is \$54,233.

- f. The SEP is not a project that The Viking Corporation was planning or intending to perform or implement other than in settlement of the claims resolved in the CAFO.
- g. The Viking Corporation will not receive reimbursement for any portion of the SEP from another person or entity.
- h. For federal income tax purposes, The Viking Corporation will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

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

73. 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 data to U.S. EPA within seven days of U.S. EPA's request for the information.

74. Within 90 days of the effective date of the CAFO, Respondent must submit a status report identifying the work completed and the total money spent.

75. Within 210 days after 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, including letter from each fire department, and the other recipients listing the item(s) received and the date of receipt;
- 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).

76. Respondent must submit all notices and reports required by this CAFO by first class mail to James Entzminger of the Chemical Emergency Preparedness and Prevention Section at the address specified in paragraph 62, above.

77. 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, it 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.

78. Following receipt of the SEP completion report described in paragraph 75, 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 80.

79. 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 80, below.



80. If Respondent violates any requirement of this CAFO relating to the SEP,

Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent did not complete the SEP satisfactorily according to the requirements of this CAFO, including the schedule in paragraphs 67 or 69, Respondent must pay a penalty of \$54,233.
- b. If Respondent did not complete the SEP satisfactorily, but U.S. EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of the amount set forth in paragraph 68, Respondent will not be liable for any stipulated penalty under subparagraph a, above.
- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in paragraph 68, Respondent must pay a penalty of \$5,866.
- d. If Respondent did not submit timely the SEP completion report, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

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

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

82. 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 paragraph 61, above, and will pay interest, handling charges and nonpayment penalties on any overdue amounts. At the time U.S. EPA makes a demand for any stipulated penalties it will also send a copy of that demand to U.S. EPA's Cincinnati Finance Center via email at [CINWD\\_AcctsReceivable@epa.gov](mailto:CINWD_AcctsReceivable@epa.gov).

83. 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 EPCRA Section 312."

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

85. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

#### **General Provisions**

86. Pursuant to 40 C.F.R. §§ 22.5 and 22.6, the parties consent to service of this CAFO by email at the following email addresses: Martwick.cathleen@epa.gov (for Complainant) and DQUAM@vikingcorp.com (for Respondent). See 40 C.F.R. §§ 22.5-6.

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

88. This CAFO does not affect the rights of U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

89. Respondent certifies that it is complying with Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

91. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

93. 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.

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

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

**In the Matter of: The Viking Corporation, Hastings, Michigan**  
**Docket No. EPCRA-05-2018-0011**

**The Viking Corporation, Respondent**

July 31, 2018  
Date

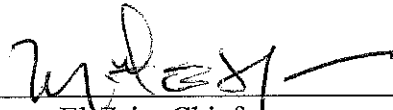
Janice A. Oshinski  
Janice Oshinski  
Treasurer  
The Viking Corporation

In the Matter of: The Viking Corporation, Hastings, Michigan  
Docket No. EPCRA-05-2018-0011


U.S. Environmental Protection Agency, Complainant

Michael S. Harg  
for JPZ

8-1-18  
Date

  
Jason El-Zein, Chief  
Emergency Response Branch 1  
U.S. Environmental Protection Agency  
Region 5

8/2/2018  
Date

  
Douglas Ballotti, Acting Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5

**In the Matter of: The Viking Corporation, Hastings, Michigan**  
Docket No. EPCRA-05-2018-0011

**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.

8/7/18  
Date

*for* Debra K. Anille  
Ann L. Coyle  
Regional Judicial Officer  
U.S. Environmental Protection Agency  
Region 5

In the Matter of: The Viking Corporation, Hastings, Michigan  
Docket No. EPCRA-05-2018-0011

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on August 10, 2018 in the following manner to the addressees:

Copy by E-mail to  
Respondent:

Dennis Quam  
Vice President – Human Resources  
The Viking Corporation  
210 North Industrial Park Drive  
Hastings, Michigan 49058  
DQUAM@vikingcorp.com  
(269) 945-9501

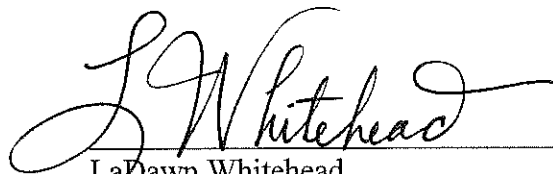
Copy by E-mail to  
Attorney for Complainant:

Cathleen Martwick  
Martwick.cathleen@epa.gov

Copy by E-mail to  
Regional Judicial Officer:

Ann Coyle  
Coyle.ann@epa.gov

Dated: August 10, 2018



LaDawn Whitehead  
Regional Hearing Clerk  
U.S. Environmental Protection Agency, Region 5