

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

IN THE MATTER OF:) Docket Number: RCRA-04-2007- 4001(b)
)
U.S. Agri-Chemicals Corporation) Proceeding under Section 3008(a)
3225 State Road 630 West) of the Resource Conservation and
Fort Meade, Florida 33841) Recovery Act, 42 U.S.C. § 6928(a)
EPA ID No.: FLD 045 003 316)
)
)
Respondent.)
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HEARING CLERK

CONSENT AGREEMENT

I. NATURE OF THE ACTION

1. This is a civil administrative enforcement action, ordering compliance with the requirements of Subtitle C of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6921, et seq., and the Florida Statutes (Fla. Stat.), Part IV Resource Recovery and Management, Section 403.702 et seq. This action is seeking the imposition of civil penalties pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a), for violations of RCRA and regulations promulgated pursuant thereto and set forth at Title 40 of the Code of Federal Regulations (C.F.R.), Parts 260 through 270, and Fla. Stat. § 403.702 et seq. and regulations promulgated pursuant thereto and set forth in the Florida Administrative Code Annotated (Fla. Admin. Code Ann. R.), Chapter 62-730.

2. The Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits, 40 C.F.R. Part 22, provide that where the parties agree to settlement of one or more causes of action before the filing of a complaint, a proceeding may be simultaneously commenced and concluded by the issuance of a Consent Agreement and Final Order (CA/FO). 40 C.F.R. §§ 22.13(b) & 22.18(b)(2).

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18 and desire to settle this action. Accordingly, before any testimony has been taken upon the pleadings and without any admission of violation or adjudication of any issue of fact or law and in accordance with 40 C.F.R. § 22.13(b), Complainant and Respondent have agreed to the execution of this CA/FO, and Respondent hereby agrees to comply with the terms of this CA/FO.

4. Complainant is the Chief, RCRA and OPA Enforcement and Compliance Branch, RCRA Division, Region 4, United States Environmental Protection Agency (EPA).

5. Respondent is U.S. Agri-Chemicals Corporation ("USAC" or "Respondent"), a subsidiary of USAC Holdings, Inc., corporation doing business in the State of Florida. The business is located at 3225 State Road 630 West, Fort Meade, Florida 33841.

III. PRELIMINARY STATEMENTS

6. Pursuant to Section 3006 of RCRA, 42 U.S.C. § 6926(g), on February 12, 1985, the State of Florida ("the State") received final authorization to carry out a hazardous waste program in lieu of the federal program. The requirements of the authorized state program are found in Fla. Stat. § 403.702 et seq. and F.A.C. Chapter 62-730.

7. Pursuant to Section 3006(g) of RCRA, 42 U.S.C. § 6926(g), the requirements established by the Hazardous and Solid Waste Amendments of 1984 (HSWA), Pub. L. 98-616, are immediately effective in all states upon their federal effective date regardless of the State's authorization status. On November 17, 2000, the State of Florida received authorization under HSWA.

8. Although EPA has granted the State of Florida authority to enforce its own hazardous waste program, EPA retains jurisdiction and authority to initiate an independent enforcement action, pursuant to Section 3008(a) of RCRA, 42 U.S.C. § 6928(a). EPA exercises this authority in the manner set forth in the Memorandum of Agreement between EPA and the State.

9. Pursuant to Section 3008(a)(2) of RCRA, 42 U.S.C. § 6928(a)(2), Complainant has given notice of this action to the State of Florida before issuance of this CA/FO.

10. Respondent is a corporation incorporated and doing business in the State of Florida.

11. Respondent is a "person" as defined in F.A.C. Chapter 62-730.020 (40 C.F.R. § 260.10).

12. Respondent is the "owner" and "operator" of a "facility" located at 3225 State Road 630 West, Fort Meade, Florida 33841, as those terms are defined in F.A.C. Chapter 62-730.030 (40 C.F.R. § 260.10).

13. On October 19-20, 2005, representatives of EPA and the Florida Department of Environmental Protection (FDEP) performed a RCRA Sampling Investigation (RSI) of the Facility.

14. USAC is no longer operating. Prior to shutdown, USAC produced the solid fertilizer monoammonium phosphate (MAP). Sulfuric acid and phosphoric acid are essential reactants in the aforementioned product and were produced and consumed onsite. Phosphoric acid is produced by the digestion of phosphate rock with sulfuric acid. The reaction yields phosphoric acid and calcium sulfate (phosphogypsum or gypsum).

15. In another plant onsite, MAP was produced by reacting phosphoric acid with ammonia to produce monoammonium phosphate liquid and excess ammonia. The monoammonium phosphate was then cooled, granulated, and stored in a warehouse onsite until transported to the purchaser.

IV. EPA ALLEGATIONS AND DETERMINATIONS

16. Respondent's most recent hazardous waste notification identified the facility as a Small Quantity Generator (SQG) of hazardous waste at its location at 3225 State Road 630 West, Fort Meade, Florida.

17. On October 19, 2005, the concrete pad (floor) of the phosphoric acid storage tank farm was being washed down with water from the cooling pond system and at least one phosphoric acid clarifier tank was being cleaned out (clarifier sludge rinsed out). The wash-down was associated with plant operations prior to shut down and not with the subsequent closure activities for the phosphogypsum stack system.

18. The wash-down water and clarifier clean-out flowed into a concrete ditch downgradient of the tank farm.

19. Water in the ditch flowed to a sump where it commingled with other wastewater and was then "disposed" into the unlined cooling pond system as that term is defined in F.A.C. Chapter 62-730.030 (40 C.F.R. § 260.10). EPA collected samples from the concrete ditch receiving the wash-down water and samples were collected from the effluent to the cooling pond system. These samples are referred to as TFFW and OPW, respectively.

20. With regards to sample TFFW, the pH of the wastewater was 1.24 and it exceeded the toxicity characteristic for chromium (5.0 mg/L) with a result of 12 mg/L as determined by the Toxicity Characteristic Leaching Procedure (TCLP). Sample OPW had a pH of 1.32 but did not fail TCLP for any RCRA metals.

21. Since the pH of wastewater sample TFFW was less than 2, it exceeded the characteristic of corrosivity (D002). Since the chromium concentration in the sample, as determined by TCLP, was 12 mg/L, it exceeded the characteristic of toxicity for chromium (D007).

22. Since the pH of the wastewater sample OPW was less than 2, it exceeded the characteristic of corrosivity (D002).

23. The TFFW and OPW samples were compared to the Land Disposal Restriction (LDR) Universal Treatment Standards (UTS) found at F.A.C. 62-730.160/40 C.F.R. §§ 268.40 and 268.48.

24. The TFFW sample exceeded UTS for arsenic, cadmium, and chromium. The OPW sample exceeded the UTS for cadmium and chromium.

25. Respondent, is a “generator” of the wastes listed in paragraphs 18-22 above and these wastes are “solid wastes” and “hazardous wastes” as those terms are defined in F.A.C. Chapter 62-730.030 (40 C.F.R. §§ 260.10, 261.2 & 261.3).
26. Thus, Respondent is in violation of the Land Disposal Restrictions found at F.A.C. 62-730.160/40 C.F.R. §§ 268.7, 268.9, and 268.40(a), for disposing of D002/D007 hazardous waste into a surface impoundment without determining the applicable treatment standards, by disposing before the treatment standards were met, and for failure to comply with the other notice, certification, and waste analysis requirements in these sections.
27. At the time of the October 19-20, 2005, RSI, Respondent had not made hazardous waste determinations for the D002/D007 wastewater from the tank farm pad wash-down or the clarifier tank cleanout wastewater.
28. Thus, Respondent is in violation of 40 C.F.R. § 262.11 for failing to make hazardous waste determinations.
29. Respondent does not have a permit or interim status for the operation of a RCRA storage, treatment, or disposal facility.
30. Thus, Respondent disposed of hazardous waste in violation of Section 3005 of RCRA, 42 U.S.C. § 6925.
31. On November 21, 2006, the FDEP inspected USAC to determine its compliance with state and federal hazardous waste regulations.
32. On November 21, 2006, spent mercury containing lamps were stored in containers that were not closed or marked as “Universal Waste Lamps,” “Waste Lamps,” or “Used Lamps.”
33. Thus, Respondent was in violation of 40 C.F.R. §§ 273.13(d)(1) & 273.14(e).
34. On November 21, 2006, a container of “used oil” as that term is defined in 40 C.F.R. § 279.1 was not marked with the words “used oil,” and there was evidence of a release of used oil from the compressor at the west end of the facility’s maintenance shop building.
35. Thus, Respondent was in violation of 40 C.F.R. §§ 279.22(c)(1) & 279.22(d).
36. On November 21, 2006, documentation of training meeting the requirements of a Large Quantity Generator was not readily available.
37. Thus, Respondent was in violation of 40 C.F.R. § 265.16.
38. On November 21, 2006, Respondent’s 2001 Contingency Plan was missing the following: emergency coordinators’ addresses, a description of arrangements with local authorities, a specific list of emergency equipment with specifications, capabilities and locations,

documentation of the Contingency Plan's distribution to local authorities, and a statement that the emergency coordinator is authorized to commit funds for incident response.

39. Thus, Respondent was in violation of 40 C.F.R. § 265 Subpart D.

40. Based on the allegations set forth in paragraphs 18-22, 24, 32, and 33 above, USAC is in violation of F.A.C Chapter 62-730/40 C.F.R. § 265.31 for failing to maintain and operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste or hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment.

V. TERMS OF AGREEMENT

41. Based on the foregoing Preliminary Statements, Allegations and Determinations, the parties agree to the following:

42. For the purposes of this CA/FO, Respondent admits the jurisdictional allegations set out in this CA/FO.

43. Respondent neither admits nor denies the factual allegations or legal conclusions set out in this CA/FO including the underlying legal conclusion that clarifier waste at the subject phosphoric acid facility is subject to RCRA.

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

45. Respondent waives its right to challenge the validity of this CA/FO and the settlement of the matters addressed in this CA/FO based on any issue related to the Paperwork Reduction Act.

46. Respondent waives any right it may have pursuant to 40 C.F.R. § 22.8 to be present during any discussions with, or to be served with and reply to, any memorandum or communication addressed to EPA officials where the purpose of such discussion, memorandum or communication is to persuade such official to accept and issue this CA/FO.

47. The parties agree that the settlement of this matter is in the public interest and that this CA/FO is consistent with the applicable requirements of RCRA.

48. The parties agree that compliance with the terms of this CA/FO shall resolve the violations of RCRA alleged in this CA/FO.

49. Respondent by signing this CA/FO certifies that all violations alleged in this CA/FO and alleged in the FDEP Hazardous Waste Inspection Report to Respondent dated March 23, 2007, have been corrected.

50. Respondent by signing this CA/FO also certifies the facility is undergoing closure of the phosphogypsum stack system pursuant to the requirements set forth at F.A.C. 62-673 and a

Consent Order entered by Respondent with the FDEP that addresses closure costs and financial responsibility (the "DEP Consent Order").

51. Under the terms of the DEP Consent Order, Respondent has established a trust fund for closure cost financial assurance in the amount of \$80,000,000 and is obligated to increase the amount so that it equals or exceeds current closure cost estimates. This increased funding is based on various commitments, including the assignment of proceeds from sale of assets currently held by Respondent.

52. Each party will pay its own costs and attorney's fees.

53. Respondent consents to the payment of a civil penalty in the amount of \$34,000.00 within 30 calendar days of the effective date of this CA/FO.

54. Payment shall be made by cashier's check, certified check, or other payment acceptable to EPA, payable to: Treasurer, United States of America. The facility name and the docket number for this matter shall be referenced on the face of the check. Payment shall be tendered to:

U.S. Environmental Protection Agency
Cincinnati Accounting Operations
Mellon Lockbox 371099M
Pittsburgh, Pennsylvania 15251-7099

Respondent shall submit a copy of the payment to the following addressees:

Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

and to:

Larry Lamberth, Acting Chief
South Enforcement and Compliance Section
RCRA and OPA Enforcement and Compliance Branch
RCRA Division
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303-8909

55. If Respondent fails to remit the civil penalty as agreed to herein, EPA is required to assess interest and penalties on debts owed to the United States and a charge to cover the costs of processing and handling the delinquent claim. Interest, at the statutory judgment rate provided for in 31 U.S.C. § 3717, will therefore begin to accrue on the civil penalty if not paid within 30

calendar days after the effective date of this Consent Agreement. Pursuant to 31 U.S.C. § 3717, Respondent must pay the following amounts on any amount overdue:

- (a) Interest. Any unpaid portion of a civil penalty must bear interest at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717(a)(1). Interest will therefore begin to accrue on a civil penalty or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 4 C.F.R. § 102.13(c).
- (b) Monthly Handling Charge. Respondent must pay a late payment handling charge of \$15.00 on any late payment, with an additional charge of \$15.00 for each subsequent 30 calendar day period over which an unpaid balance remains.
- (c) Non-Payment Penalty. On any portion of a civil penalty more than 90 calendar days past due, Respondent must pay a non-payment penalty of six percent per annum, which will accrue from the date the penalty payment became due and is not paid. This non-payment is in addition to charges which accrue or may accrue under subparagraphs (a) and (b).

56. Penalties paid pursuant to this CA/FO are not deductible for federal purposes under 28 U.S.C. § 162(f).

VI. RESERVATION OF RIGHTS

57. Notwithstanding any other provision of this CA/FO, an enforcement action may be brought pursuant to Section 7003 of RCRA, 42 U.S.C. § 6973, or other statutory authority, should the EPA find that the handling, storage, treatment, transportation, or disposal of solid waste or hazardous waste at Respondent's facility may present an imminent and substantial endangerment to human health or the environment.

58. If EPA determines that activities in compliance or noncompliance with this CA/FO have caused or may cause a release of hazardous waste or hazardous constituent(s), or a threat to human health and/or the environment, or that Respondent is not capable of undertaking any of the work ordered, EPA may order Respondent to stop further implementation of this CA/FO for such period of time as EPA determines may be needed to abate any such release or threat and/or to undertake any action which EPA determines is necessary to abate such release or threat.

59. Complainant reserves the right to take enforcement action against Respondent for any future violations of RCRA and the implementing regulations and to enforce the terms and conditions of this CA/FO.

60. Except as expressly provided herein, nothing in this CA/FO shall constitute or be construed as a release from any civil or criminal claim, cause of action or demand in law or equity for any liability Respondent may have arising out of, or relating in any way to, the transportation, release, or disposal of any hazardous constituents, hazardous substances,

hazardous wastes, pollutants, or contaminants found at, taken to, or taken from Respondent's facility.

61. This CA/FO may be amended or modified only by written agreement executed by both the EPA and Respondent.

VII. OTHER APPLICABLE LAWS

62. All actions required to be taken pursuant to this CA/FO shall be undertaken in accordance with the requirements of all applicable local, state, and Federal laws and regulations. Respondent shall obtain or cause its representatives to obtain all permits and approvals necessary under such laws and regulations.

VIII. PARTIES BOUND

63. This CA/FO shall be binding upon Respondent and its successors and assigns. Respondent shall cause its officers, directors, employees, agents and all persons, including independent contractors, contractors and consultants acting under or for Respondent, to comply with the provisions hereof in connection with any activity subject to this CA/FO.

64. No change in ownership, partnership, corporate or legal status relating to the facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

65. The undersigned representative of Respondent hereby certifies that she or he is fully authorized to enter into this CA/FO and to execute and legally bind Respondent to it.

IX. SERVICE OF DOCUMENTS

66. A copy of any documents that Respondent files in this action shall be sent to the following attorney who represents EPA in this matter and who is authorized to receive service for EPA in the proceeding:

Frank Ney
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909
(404) 562-9532

67. A copy of any documents that Complainant files in this action shall be sent to the following individual who represents the Respondent in this matter and who is authorized to receive service for the Respondent in this proceeding:

Denver Phares
Directing Manager Closure Activities
U.S. Agri-Chemicals Corporation
3225 State Road 630 West
Fort Meade, Florida 33841

X. SEVERABILITY

68. It is the intent of the parties that the provisions of this CA/FO are severable. If any provision or authority of this CA/FO or the application of this CA/FO to any party or circumstances is held by any judicial or administrative authority to be invalid or unenforceable, the application of such provisions to other parties or circumstances and the remainder of the CA/FO shall remain in force and shall not be affected thereby.

XI. TERMINATION AND SATISFACTION

69. The provisions of this CA/FO shall be deemed satisfied upon a determination by Complainant that Respondent has fully satisfied the requirements of this CA/FO.

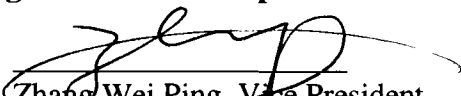
XII. EFFECTIVE DATE

70. The effective date of this CA/FO shall be the date on which the CA/FO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

U.S. Agri-Chemicals Corporation

By:



Zhang Wei Ping, Vice President
U.S. Agri-Chemicals Corporation

Dated:

4/16/07

U.S. Environmental Protection Agency

By:


Narindar M. Kumar, Chief
RCRA and OPA Enforcement and Compliance Branch
RCRA Division

Dated:

4/26/07

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4**

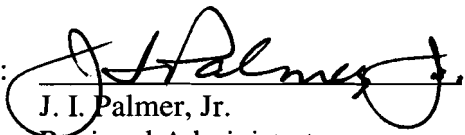
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EPA ID No.: FLD 045 003 316)
)
)
)
Respondent.

FINAL ORDER

The foregoing Consent Agreement is hereby approved, ratified and incorporated by reference into this Final Order in accordance with the *Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits*, 40 C.F.R. Part 22. The Respondent is hereby ORDERED to comply with all of the terms of the foregoing Consent Agreement effective immediately upon filing of this Consent Agreement and Final Order with the Regional Hearing Clerk. This Order disposes of this matter pursuant to 40 C.F.R. §§ 22.18 and 22.31.

BEING AGREED, IT IS SO ORDERED this 3rd day of May, 2007.

BY:


J. I. Palmer, Jr.
Regional Administrator
EPA Region 4

CERTIFICATE OF SERVICE

I hereby certify that I have this day filed the original and a true and correct copy of the foregoing Consent Agreement and the attached Final Order (CA/FO), in the Matter of U.S. Agri-Chemicals Corporation, Docket Number: RCRA-2007-04- 4001(b), on 5-9 2007, and on 5-9 2007, served the parties listed below in the manner indicated:

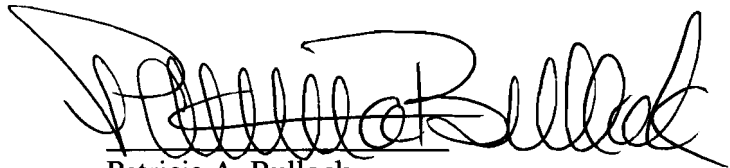
Frank Ney
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, SW
Atlanta, Georgia 30303-8909

(Via EPA's internal mail)

Denver Phares
Directing Manager Closure Activities
U.S. Agri-Chemicals Corporation
3225 State Road 630 West
Fort Meade, Florida 3384

(Via Certified Mail - Return Receipt Requested)

Date: 5-9-07



Patricia A. Bullock
Regional Hearing Clerk
U.S. EPA - Region 4
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511