



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

APR 03 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Larry J. Kane, Esq.
Bingham McHale LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204

Re: Duke Energy Indiana, Inc., Plainfield, Indiana
Consent Agreement and Final Order – Docket Nos: CERCLA-05-2008-0009,
EPCRA-05-2008-0017 and MM-05-2008-0004

Dear Mr. Kane:

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 April 3, 2009.

Please have your client pay the CERCLA civil penalty in the amount of \$18,134 in the manner prescribed in paragraphs 9 and 11 and reference your check with the number BD 2750930B007 and docket numbers CERCLA-05-2008-0009 and MM-05-2008-0004.

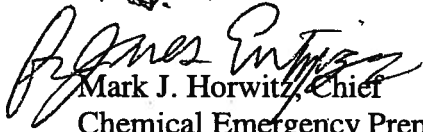
Please have your client pay the EPCRA civil penalty in the amount of \$36,268 in the manner prescribed in paragraphs 10 and 11 and reference your check with the number BD 2750944E017 and docket numbers EPCRA-05-2008-0017 and MM-05-2008-0004.

The payments are due on May 3, 2009.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Timothy Thurlow, Associate Regional Counsel, at (312) 886-6623. Thank you for your assistance in resolving this matter.

Sincerely yours,

M.J.H.



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

Enclosure

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

Timothy Thurlow
Office of Regional Counsel
U.S. EPA Region 5

Ian Ewusi-Wilson (w/enclosure)
Indiana SERC

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, DC 20460-6281

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY 0 2009
REGION 5

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:)
)
Duke Energy Indiana, Inc.)
1000 E. Main Street)
Plainfield, Indiana)
Respondent.)
_____)

Docket Nos. CERCLA-05-2608-0009
MM-05-2008-0004
EPCRA-05-2008-0017

Proceeding to Assess a Civil Penalty Under
Section 109(b) of the Comprehensive
Environmental Response, Compensation, and
Liability Act, and Section 325(b)(2), (c)(1) and
(c)(2) of the Emergency Planning and
Community Right-to-Know Act of 1986

Consent Agreement and Final Order

1. The Complainant is, by lawful delegation, the Chief of the Emergency Response Branch 1, United States Environmental Protection Agency (U.S. EPA), Region 5.

2. On July 9, 2008, U.S. EPA filed the Complaint in this action against Respondent Duke Energy Indiana. The Complaint alleges that Respondent violated Section 103(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9603(a), by failing to immediately notify the National Response Center of a release which occurred at its facility in Cayuga, Indiana on June 14, 2005; and violated Section 304(a) of Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11004(a), by failing to immediately notify the Indiana State Emergency Response Commission (SERC) of the June 14, 2005 release and by failing to immediately notify the community emergency coordinator for the Local Emergency Planning Committee (LEPC) for an area likely to be affected by the release.

3. Respondent filed an Answer and requested a hearing under Section 325(b)(1)(B) of EPCRA, 42 U.S.C. § 11045(b)(1)(B), and Section 109(a)(2)(B) of CERCLA, 42 U.S.C. § 9609(a)(2)(B).

Stipulations

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

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

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

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

Civil Penalty

8. In consideration of Respondent's responsiveness and its provision of supporting documentation requested, and Respondent's cooperation and preparedness during the settlement process, Complainant has determined that an appropriate civil penalty to settle this action is \$54,402.

9. Within 30 days after the effective date of this CAFO, Respondent must pay a \$18,134 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
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

The check must note the following: In the Matter of Duke Energy Indiana, Inc., the docket number of this CAFO and the billing document number 27509.30 B007.

10. Within 30 days after the effective date of this CAFO, Respondent must pay a \$36,268 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note the following: In the Matter of Duke Energy Indiana, Inc., the docket number of this CAFO and the billing document number 2750944 E017.

11. A transmittal letter, stating Respondent's name, the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payments. Respondent must send a copy of the checks and transmittal letters to:

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

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

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

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

13. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

14. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

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

16. 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.

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

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

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

20. The terms of this CAFO bind the Complainant, the U.S. EPA, and the Respondent and its successors, and assigns.

21. 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.

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

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

Duke Energy Indiana, Inc., Respondent

3/23/09
Date

John D. Frayer

U.S. Environmental Protection Agency, Complainant

3-30-09
Date

Jo El-Zein
Jason El-Zein, Chief
Emergency Response Branch 1
Superfund Division

3-31-09
Date

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

**In the Matter of:
Duke Energy Indiana, Inc.
Docket Nos. CERCLA-05-2608-0009, MM-05-2008-0004, & EPCRA-05-2008-0017**

In the Matter of:
Duke Energy Indiana, Inc.
Docket Nos. CERCLA-05-2608-0009, MM-05-2008-0004, EPCRA-05-2008-0017

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.

4/11/09
Date

Walter W. Kowaluk
for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

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PROTECTION AGENCY

**In the Matter of:
Duke Energy Indiana, Inc.
Docket Nos. CERCLA-05-2608-0009, MM-05-2008-0004, EPCRA-05-2008-0017**

Certificate of Service


I, Ruth McNamara, certify that I hand delivered the original of the Consent Agreement and Final Order, docket numbers CERCLA-05-2608-0009, MM-05-2008-0004, EPCRA-05-2008-0017 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to the Administrative Law Judge and to Duke Energy Indiana's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Larry J. Kane, Esq.
Bingham McHale LLP
2700 Market Tower
10 West Market Street
Indianapolis, IN 46204

Judge Barbara A. Gunning
Office of Administrative Law Judges
U.S. Environmental Protection Agency
Mail Code 1900L
1200 Pennsylvania Ave., NW
Washington, DC 20460-6281

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REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 3rd day of April, 2009


Ruth McNamara
U.S. Environmental Protection Agency
Region 5