



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

JUL 17 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Wendlene M. Lavey
Squire Sanders (US) LLP
4900 Key Tower, 127 Public Square
Cleveland, Ohio 44114

CERCLA-05-2013-0011

Re: ArcelorMittal Burns Harbor LLC, Burns Harbor, Indiana
Consent Agreement and Final Order **MM-05-2013-0007** **EPCRA-05-2013-0019**

Dear Ms. Lavey:

Enclosed please find one copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA filed original CAFO with the Regional Hearing Clerk on July 17, 2013.

Please have your client pay the CERCLA civil penalty in the amount of \$23,023 in the manner prescribed in paragraph 55 and 57, reference your check with the CERCLA docket number **CERCLA-05-2013-0011**, and the EPCRA billing document number **2751330B011**.

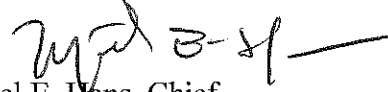
Please have your client pay the EPCRA civil penalty in the amount of \$23,023 in the manner prescribed in paragraph 56 and 57, reference your check with the EPCRA docket number **EPCRA-05-2013-0019**.

The payments are due on August 17, 2013.

Please feel free to contact Ruth McNamara at (312) 353-3193 or by e-mail at mcnamara.ruth@epa.gov if you have any questions regarding the enclosed documents.

Please direct any legal questions to Cynthia King, Assistant Regional Counsel, at (312) 886-6831 or by e-mail at cynthia.king@epa.gov. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael E. Hans", with a horizontal line extending to the right.

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

Enclosure

cc: Cynthia King
ORC

Ian Ewusi
IN SERC Contact (w/enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

MM-05-2013-0007

In the Matter of:

ArcelorMittal Burns Harbor LLC
Burns Harbor, Indiana

Respondent.

) Docket Nos. CERCLA-05-2013-0011

)

) EPCRA-05-2013-0019

)

) 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

)

)



JUL 17 2013

Consent Agreement and Final Order
Preliminary Statement

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

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), Section 325(b)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), (c)(1), (c)(2), 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 the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent ArcelorMittal Burns Harbor LLC is a limited liability corporation doing business in the State of Indiana.

4. Under 40 C.F.R. § 22.13(b), 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).

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 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 reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal and state agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 304(a)(3) of EPCRA, 42 U.S.C. § 11004(a)(3), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of a hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. Part 1910, Subpart Z are hazardous.

14. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. 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 these statutory maximum penalties to \$32,500 per day of violation that occurred after March 15, 2004 through January 12, 2009 and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

15. Respondent is a “person” as that term is defined under Section 101(21) of

CERCLA, 42 U.S.C. § 9601(21) and 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 250 W. U.S. Highway 12, Burns Harbor, Indiana (facility).

17. At all time relevant to this CAFO, Respondent was in charge of the facility.

18. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. Cyanide (soluble salts and complexes) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

20. Cyanide (soluble salts and complexes) has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

21. Cyanide (soluble salts and complexes) is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-

22. Cyanide (soluble salts and complexes) 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).

23. At all times relevant to this Complaint, Respondent produced, used or stored cyanide (soluble salts and complexes) at the facility.

24. Under its National Pollutant Discharge Elimination System permit, Respondent is permitted to discharge up to 21 pounds per day of total cyanide from Outfall 011, based on 24-hour composite sampling.

25. On July 13, 2010, for the 24-hour period ending at or about 6:00 a.m., Respondent measured a discharge into the environment from Respondent's facility of approximately 72.79 pounds of total cyanide at its Outfall 011 (Release 1), 51.79 pounds in excess of the permitted

limit.

26. In a 24-hour time period, the discharging of cyanide (soluble salts and complexes) exceeded 10 pounds.

27. During Release 1, approximately 72.79 pounds of cyanide (soluble salts and complexes) spilled, leaked, pumped, poured, emitted, emptied, discharged, escaped, dumped or disposed into the navigable waters, waters of the contiguous zone, surface water, land surface or subsurface strata.

28. Release 1 includes a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) and Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

29. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

30. Respondent had knowledge of Release 1 on July 14, 2010, at approximately 9:53 a.m.

31. Respondent notified the NRC of the release on July 14, 2010, at 1:28 p.m.

32. Release 1 was likely to affect the State of Indiana and Porter County, Indiana.

33. At all times relevant to this Complaint, the Indiana State Emergency Response Commission was the SERC for Indiana under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a) and the Porter County Local Emergency Planning Committee was the LEPC for Porter County under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

34. Respondent notified the Indiana SERC of the release on July 14, 2010, at 1:59 p.m.

35. Respondent notified the LEPC of the release on July 14, 2010, at 2:25 p.m.

36. Respondent did not immediately notify the NRC as soon as Respondent had

knowledge of the release.

37. 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).

38. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

39. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

40. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

41. Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Release 2 – November 19, 2010

42. 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).

43. 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.

44. On November 19, 2010, at or about 7:30 a.m., a release occurred from Respondent's facility of approximately 6,654 pounds of sulfuric acid (Release 2).

45. In a 24-hour time period, the release of sulfuric acid exceeded 1,000 pounds.

46. During Release 2, approximately 6,654 pounds of sulfuric acid spilled, leaked, pumped, poured, emitted, emptied, discharged, escaped, dumped or disposed into the land surface or subsurface strata.

47. Release 2 is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

48. Respondent had knowledge of Release 2 on November 19, 2010, at approximately 7:48 a.m.

49. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

50. Respondent notified the NRC of Release 2 on November 19, 2010, at 10:06 a.m.

51. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of Release 2.

52. Respondent’s failure to immediately notify the NRC of Release 2 is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Civil Penalty

53. Complainant has determined that an appropriate civil penalty to settle this action is \$46,046 for the violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, 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).

54. Within 30 days after the effective date of this CAFO, Respondent must pay a

\$23,023 civil penalty for the CERCLA violations and a \$23,023 civil penalty for the EPCRA violations.

55. For the CERCLA penalty payment, Respondent must pay the penalty by electronic funds transfer, payable to “EPA Hazardous Substance Superfund,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read:
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state the case name, the docket number of this CAFO and the billing document number.

56. 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
Field Tag 4200 of the Fedwire should read:
“D68010727 Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state the case name and the docket number of this CAFO.

57. A transmittal letter, stating Respondent’s name, the case name, Respondent’s complete address, the case docket numbers and the billing document number, if any, must accompany the payment. Respondent must send a copy of the payment and transmittal letter to:

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

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

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

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

59. 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.

60. 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

61. This CAFO resolves only Respondent's liability for federal civil penalties for the

violations alleged in the CAFO.

62. 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.

63. 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.

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

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

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

67. 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.

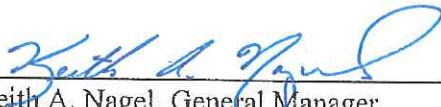
68. Each party agrees to bear its own costs and attorney's fees in this action.

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

70. This CAFO is effective upon filing with the Regional Hearing Clerk.

ArcelorMittal Burns Harbor LLC, Burns Harbor, Indiana

Date 6/10/2013



Keith A. Nagel, General Manager
Environmental Affairs & Real Estate
ArcelorMittal USA, Inc.


U.S. Environmental Protection Agency, Complainant

Date 6/25/13



Sharon Jaffess, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

Date 7/11/13




for Richard C. Karl, Director
Superfund Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: ArcelorMittal Burns Harbor LLC, Burns Harbor, Indiana
Docket Nos. MM-05-2013-0007 CERCLA-05-2013-0011 EPCRA-05-2013-0019

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.

7-12-13
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5


JUL 17 2013
REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of: ArcelorMittal Burns Harbor LLC, Burns Harbor, Indiana
Docket Nos. MM-05-2013-0007 CERCLA-05-2013-0011 EPCRA-05-2013-0019

Certificate of Service

I, Ruth McNamara, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Wendlene M. Lavey
Squire Sanders (US) LLP
4900 Key Tower, 127 Public Square
Cleveland, Ohio 44114

on the 17th day of July, 2013.

Ruth McNamara
Ruth McNamara
U.S. Environmental Protection Agency
Region 5

