



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

OCT 19 2007

REPLY TO THE ATTENTION OF:

SC-6J

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

David Stuckey, Plant Manager  
Mead Johnson & Company  
2400 West Lloyd Expressway  
Evansville, Indiana 47721-0001

Re: Mead Johnson & Company, Evansville, Indiana  
Consent Agreement and Final Order, Docket No. **CERCLA-05-2008-0001**

Dear Mr. Stuckey:

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 October 19, 2007.

Please pay the CERCLA civil penalty in the amount of \$5,239 in the manner prescribed in paragraphs 25 and 26, and reference your check with the billing document number 2750830B002 and the docket number CERCLA-05-2008-0001.

Your payment is due on November 19, 2007

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 Ignacio Arrazola, Associate Regional Counsel, at (312) 886-7152. 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

Ignacio Arrazola (w/enclosure)  
ORC

Ian Ewusi-Wilson(w/enclosure)  
Indiana SERC

Marcy Toney  
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**IN THE MATTER OF:**

**Mead Johnson & Company  
2400 West Lloyd Expressway  
Evansville, Indiana 47721-0001**

) **Docket No. CERCLA-05-2008-0001**  
)  
) **Proceeding to Assess a Civil Penalty under**  
) **Section 109(b) of the Comprehensive**  
) **Environmental Response, Compensation,**  
) **and Liability Act.**  
)  
)

**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.

2. The Complainant is, by lawful delegation, the Chief, Chemical Emergency Preparedness and Prevention Section, Emergency Response Branch 1, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

3. Respondent is Mead Johnson & Company, a corporation doing business in the State of Indiana.

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 to the terms of this CAFO.

### **Jurisdiction and Waiver of Right to Hearing**

7. Mead Johnson & Company admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Mead Johnson & Company 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 Collection Improvement 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 that occurred after March 15, 2004.

### **Factual Allegations and Violations**

11. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

12. Respondent's facility in Evansville, Indiana consists of a building, structure, installation, equipment, storage container, or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

13. Respondent's facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

14. At all times relevant to this CAFO, Respondent was in charge of the facility.

15. Chlorine CAS# 7782-50-5 is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

16. Chlorine CAS# 7782-50-5 has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

17. On August 25, 2005 at or about 2200 Central Time a release occurred from Respondent's facility of at least 20 pounds of chlorine (the release).

18. In a 24 hour time period, the release exceeded the 10 pound reportable quantity.

19. During the release, at least 20 pounds of chlorine leaked, discharged, or escaped into surface water and ambient air.

20. The release is a "release" as that term is defined under Section 101(22) of CERCLA 42 U.S.C. § 9601(22).

21. Respondent had knowledge of the release on August 25, 2005 at approximately 2300 Central Time.

22. Respondent notified the NRC of the release on August 26, 2005 at 0956 Eastern Time (0856 Central Time).

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

24. Each day Respondent failed to notify immediately 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 Mead Johnson & Company's cooperation and willingness to settle, U.S. EPA has determined, consistent with 42 U.S.C. § 9609(a)(3), that an appropriate civil penalty to settle this action is \$5,239.

26. Within 30 days after the effective date of this CAFO, Respondent must pay a \$5,239 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. Environmental Protection Agency  
Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000

The check must note the case title of this matter: In the Matter of Mead Johnson & Company, the docket number of this CAFO and the billing document number 2750830B002.

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 Blvd.  
Chicago, Illinois 60604-3511

Ruth McNamara, (SC-6J)  
Chemical Emergency Preparedness  
and Prevention Section  
77 West Jackson Blvd.  
Chicago, Illinois 50504-3511

Ignacio Arrázola, (C-14J)  
Office of Regional Counsel  
U.S. Environmental Protection Agency, Region 5  
77 West Jackson Blvd.  
Chicago, Illinois 60604-3511

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

29. 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.

30. 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 six percent per year penalty on any principal amount more than 90 days past due.

#### **General Provisions**

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

32. 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.

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

34. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

35. This CAFO is a “final order” for purposes of U.S. EPA’s Enforcement Response Policy for Section 103 of CERCLA.

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

37. 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.

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

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

**SIGNATORIES**

**U.S. Environmental Protection Agency  
Complainant**

Date: 10/15/07

By: Mark J. Horwitz  
Mark J. Horwitz, Chief  
Chemical Emergency Preparedness  
And Prevention Section  
Emergency Response Branch 1  
Superfund Division  
U.S. EPA Region 5

Date: 10/15/07

By: Richard K. Carl  
Richard K. Carl, Director  
Superfund Division  
U.S. EPA Region 5

**Mead Johnson & Company, Respondent**

Date: 9/26/09

By: James J. Jobe  
Signature  
James J. Jobe  
Sr. Vice President, Global Supply Chain  
Printed Name and Title

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**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.

Date: 10/18/07

By: Walter W. Kwiatkowski  
for

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

**Certificate of Service**

I, Ruth McNamara, certify that I hand delivered one original and one copy of the Consent Agreement and Final Order, docket number **CERCLA-05-2008-0001** to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed one original by first-class, postage prepaid, certified mail, return receipt requested, to Mead Johnson & Company by placing it in the custody of the United States Postal Service addressed as follows:

James J. Jobe, Senior Vice President  
Global Supply Chain  
Mead Johnson & Company  
2400 West Lloyd Expressway  
Evansville, Indiana 47721-0001

on the 16<sup>th</sup> day of October, 2007.

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

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