



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

September 30, 2008

HAND DELIVERY

Lydia Guy
Regional Hearing Clerk (3RC00)
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Re: Consent Agreement and Final Order
U.S. EPA Docket No. CERC/EPCRA-03-2008-0344

Dear Ms. Guy:

Enclosed for filing is a fully executed Consent Agreement and Final Order settling this matter pursuant to 40 C.F.R. § 22.13(b). A courtesy copy of the Consent Agreement and Final Order is also enclosed.

Sincerely,

A handwritten signature in cursive script that reads "Allison F. Gardner".

Allison F. Gardner
Assistant Regional Counsel

cc: Richard Morton, Esq.
Hon. William B. Moran
Hon. Susan L. Biro



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

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2009 SEP 30 AM 8:17
OFFICE OF REGIONAL COUNSEL
EPA REGION III PHILADELPHIA, PA

In the Matter of:)
)
Dow Reichhold Specialty)
Latex, LLC)
2400 Ellis Road)
Durham, North Carolina)
27703,)
)
Respondent.)
)
)
Dow Reichhold Specialty)
Latex, LLC)
144 Fork Branch Road)
Dover, Delaware)
19904,)
)
Facility.)
)

EPA Docket No.: CERC-03-2008-0344
EPA Docket No.: EPCRA-03-2008-0344

Proceedings pursuant to Sections 103 and 109
of the Comprehensive Environmental Response,
Compensation, and Liability Act, as amended,
42 U.S.C. §§ 9603, 9609, and Sections 304
and 325 of the Emergency Planning and
Community Right-to-Know Act of 1986,
42 U.S.C. §§ 11004, 11045

CONSENT AGREEMENT AND FINAL ORDER

Statutory Authority

This Consent Agreement ("CA") is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9609, the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and under the authority provided by 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, ("Part 22"), in Section 22.18(b)(2). The President has delegated his authority under Section 109 of CERCLA, 42 U.S.C. § 9609, to the Administrator. The Administrator has delegated that authority and the authority delegated to him under Section 325 of EPCRA, 42 U.S.C. § 11045, to the Regional Administrator of EPA, Region III, who has redelegated those authorities to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

Preliminary Statement and Stipulations

The Respondent, Dow Reichhold Specialty Latex, LLC (“Respondent” or “DRSL”), by its attorney or other authorized representative, and EPA stipulate as follows:

1. EPA issued an Administrative Complaint (“Complaint”) against Respondent, docketed at Nos. CERC-03-2009-0344 and EPCRA-03-2008-0344, on June 17, 2008. On August 27, 2008, EPA filed an unopposed motion to amend the Complaint, which was granted by Chief Administrative Law Judge Biro on September 4, 2008. EPA thereafter filed and issued an Amended Administrative Complaint (“Amended Complaint”) on September 10, 2008. The Amended Complaint alleges that Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603, by failing to immediately notify the National Response Center (“NRC”) of the July 3, 2005 release of 1,3-butadiene (the “Butadiene Release”), from Respondent’s facility located at 144 Fork Branch Road in Dover, Delaware, (“Facility”), and by failing to immediately notify the NRC of the August 25, 2006 release of styrene from the Facility (“Styrene Release”). The Amended Complaint also alleges that Respondent violated Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), by failing to immediately report the Butadiene Release to the State Emergency Response Commission for the State of Delaware (“SERC”) and to the Kent County Local Emergency Planning Committee (“LEPC”).

2. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations of the Amended Complaint.

3. For the purpose of this proceeding, Respondent neither admits nor denies the specific factual allegations contained in the Amended Complaint, but expressly waives any of its rights to contest said allegations.

4. For the purpose of this proceeding, Respondent expressly waives its rights to a hearing and to appeal this CA and accompanying Final Order (collectively, the “CA/FO”) under Section 109 of CERCLA, 42 U.S.C. § 9606, and Section 325 of EPCRA, 42 U.S.C. § 11045.

5. EPA incorporates by reference the factual allegations contained in the Amended Complaint as EPA’s Findings of Fact for this CA.

6. Based upon EPA’s Findings of Fact, EPA concludes that Respondent violated the provisions of Section 103 of CERCLA, 42 U.S.C. § 9603, by failing to report the Butadiene Release immediately to the NRC and by failing to report the Styrene Release immediately to the NRC; and Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), by failing to report the Butadiene Release immediately to the SERC and LEPC.

7. As a result of EPA's conclusion that Respondent violated Section 103 of CERCLA, 42 U.S.C. § 9603, and Sections 304(a) and (b) of EPCRA, 42 U.S.C. §§ 11004(a) and (b), EPA has determined that Respondent is liable for a civil penalty. In determining the amount of the civil penalty, the following factors have been taken into consideration: the nature, circumstances, extent and gravity of the violation or violations, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit or savings (if any) resulting from the violation, and such matters as justice may require. The agreed upon penalty is consistent with 40 C.F.R. Part 19 and the *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 (September 30, 1999)*.

Penalty

8. In settlement of the above-captioned action, Respondent consents to the assessment of a civil penalty of **\$62,741.25**. Based on the foregoing Stipulations and Findings, the parties, by their attorneys or authorized officials, hereby agree to the following:

Payment Terms

9. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CA/FO, Respondent must pay the civil penalty no later than 30 days after the date on which a copy of this CA/FO is mailed or hand-delivered to Respondent by submitting the CERCLA penalty of \$31,370.63 and the EPCRA penalty of \$31,370.62 by wire transfer to:

Federal Reserve Bank of New York
ABA = 021030004
Account = 68010727
SWIFT address = FRNYUS33
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire message should read " D 68010727
Environmental Protection Agency"

10. The Respondent shall submit proof of the wire transfer, noting the title and docket numbers of this case, to the following persons:

Lydia Guy (3RC00)
Regional Hearing Clerk
U.S. EPA, Region III
1650 Arch Street
Philadelphia, PA 19103-2029

and

Allison F. Gardner (3RC42)
Assistant Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

11. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States, as well as a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment or to comply with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

12. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

13. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalty remains unpaid.

14. A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

15. Failure by the Respondent to pay the penalty assessed by the Final Order ("FO") in full by the final due date may subject Respondent to a civil action to collect the assessed penalty, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the \$62,741.25 penalty shall not be subject to review.

General Provisions

16. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this CA on behalf of Respondent is acknowledging that he or she is fully authorized by the party represented to execute this CA and to legally bind Respondent to the terms and conditions of the CA and accompanying FO.

17. The CA/FO does not constitute a waiver, suspension or modification of the requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, or Section 304 of EPCRA, 42 U.S.C. § 11004, or any regulations promulgated thereunder.

18. This CA/FO resolves only those civil claims which are alleged in the ^{Amended} Complaint. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

19. Each party to this action shall bear its own costs and attorney's fees.

20. By entering into this CA/FO, the Respondent does not admit any liability for the civil claims alleged in the ^{Amended} Complaint.

FOR DOW REICHHOLD SPECIALTY LATEX, LLC

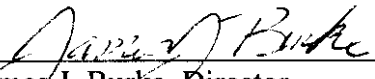

SIGNATURE

9/22/08
DATE

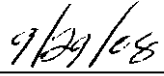
Name: ROBERT V. POVLOCK

Title: VICE PRESIDENT - FINANCE

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



James J. Burke, Director
Hazardous Site Cleanup Division



DATE



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
 REGION III
 1650 Arch Street
 Philadelphia, Pennsylvania 19103-2029

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Dover, Delaware)	Community Right-to-Know Act of 1986,
19904,)	42 U.S.C. §§ 11004, 11045
)	
Facility.)	
)	

FINAL ORDER

Pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, having determined that the penalty agreed to in the Consent Agreement is based on a consideration of the factors set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

Effective Date

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Renee Sarajian

 Renee Sarajian
 Regional Judicial Officer
 EPA, Region III

9/29/08

 DATE



"Morton, Richard"
<RMorton@wcsr.com>
09/29/2008, 04:31 PM

To: Allison Gardner/R3/USEPA/US@EPA
cc
bcc
Subject: RE: URGENT RE: DRSL CA/FO

Looks good to me. You may represent that we agree to these revisions.

Thanks,

Ric Morton

Richard E. Morton
Womble Carlyle Sandridge & Rice, PLLC
One Wachovia Center, Suite 3500
301 South College Street
Charlotte, NC 28202

Phone: 704-331-4993
Fax: 704-444-9963
Cell: 704-604-8779

email: rmorton@wcsr.com

From: Gardner.Allison@epamail.epa.gov [mailto:Gardner.Allison@epamail.epa.gov]
Sent: Monday, September 29, 2008 4:29 PM
To: Morton, Richard
Subject: URGENT RE: DRSL CA/FO
Importance: High

Ric,

The CAFO has been executed by the Division Director for the Hazardous Site Cleanup Division and delivered to the Regional Judicial Officer (RJO) today for her signature on the Final Order. However, the RJO has found a couple of typographical errors in the document. I have made the corrections (which are highlighted in the redline attached below). They are as follows:

Para 2. -- "Amended" before Complaint

Para. 15 -- correction of penalty amount to read \$62,741.25

Paras. 18 & 20 -- "Amended" before Complaint (Note if you agree to these changes, I will make them by hand in the document, to avoid having to seek another signature page from you)

Please let me know via e-mail whether you and your client assent to these changes. **Please note that tomorrow, September 30, 2008, is the final day of the federal government's fiscal year.** If we do not file the fully executed CAFO by the close of business tomorrow, we may need to seek another signature page from you, because we may need to get an entirely new docket number. **Therefore, I'm asking you to response as soon as possible.**

I apologize for the inconvenience.

Thanks.

Allison

Allison F. Gardner
Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street (3RC42)
Philadelphia, PA 19103
(215) 814-2631

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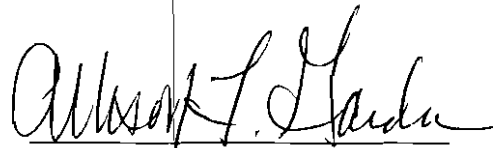
Consent Agreement and Final Order

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent by first class mail to:

Richard E. Morton, Esquire
One Wachovia Center, Suite 3500
301 South College Street
Charlotte, North Carolina 28202-6025

9/30/08
DATE


Allison F. Gardner (3RC42)
Assistant Regional Counsel
Counsel for Complainant
(215) 814-2631