

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 HAWTHORNE STREET
SAN FRANCISCO, CA 94105

FILED
2011 SEP 28 AM 11:25
U.S. EPA - REGION IX
REGIONAL HEARING CLERK

In the Matter of:) Docket No. EPCRA-09-2011- 0018
)
Diversey, Inc.,) CONSENT AGREEMENT
) and
) FINAL ORDER PURSUANT TO
) SECTIONS 22.13 AND 22.18
Respondent.)
_____)

I. CONSENT AGREEMENT

Complainant, the Director of the Communities and Ecosystems Division, United States Environmental Protection Agency, Region IX, ("EPA") and Diversey, Inc., (hereafter "Respondent") seek to settle this case and consent to the entry of this Consent Agreement and Final Order ("CAFO"), which simultaneously initiates and concludes this matter in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b).

A. AUTHORITY AND PARTIES

1. This is a civil administrative penalty action instituted against Respondent pursuant to Section 325(c) of Title III of the Superfund Amendments and Reauthorization Act, 42 U.S.C. 11001 *et seq.*, also known as the Emergency Planning and Community Right-to-Know Act of 1986 ("EPCRA"), for violation of Section 313 and the federal regulations promulgated to implement Section 313 at 40 C.F.R. Part 372.

2. Complainant is the Director of the Communities and Ecosystems Division, EPA, Region IX, who has been duly delegated the authority to initiate this action and to sign a consent agreement settling this action.

3. Respondent is a Delaware corporation with a facility located at 850 Commerce Drive, Madera, California.

B. APPLICABLE STATUTORY AND REGULATORY SECTIONS

4. Pursuant to Sections 313 and 328 of EPCRA, 42 U.S.C. 11023 and 11048, EPA promulgated the Toxic Chemical Release Reporting: Community Right-to-Know Rule at 40 C.F.R. Part 372.

5. Section 313(a) of EPCRA, as implemented by 40 C.F.R. § 372.30, provides that an owner or operator of a facility that meets the criteria set forth in EPCRA 313(b) and 40 C.F.R. § 372.22, is required to submit annually to the Administrator of the EPA and to the State in which the facility is located, no later than July 1st of each year, a toxic chemical release inventory reporting form (hereinafter "Form R or A") for each toxic chemical listed under 40 C.F.R. § 372.65 that was manufactured, processed or otherwise used at the facility during the preceding calendar year in quantities exceeding the thresholds established under EPCRA Section 313 (f) and 40 C.F.R. § 372.25.

6. Section 313(b) of EPCRA and 40 C.F.R. § 372.22 provide that the requirements of Section 313(a) and 40 C.F.R. § 372.30 apply to an owner and operator of a facility that has 10 or more full-time employees; that is in a Standard Industrial Classification major group codes 10 (except 1011, 1081, and 1094), 12 (except 1241), 20 through 39; industry codes 4911, 4931, or 4939 (limited to facilities that combust coal and/or oil for the purpose of generating power for distribution in commerce), or 4953 (limited to facilities regulated under the Resource Conservation and Recovery Act, subtitle C, 42 U.S.C. § 6921 et seq.), or 5169, 5171, or 7389 (limited to facilities primarily engaged in solvent recovery services on a contract or fee basis); and that manufactures, processes, or otherwise uses one or more toxic chemicals listed under Section 313(c) of EPCRA and 40 C.F.R. § 372.65 in quantities in excess of the applicable thresholds established under EPCRA Section 313(f) and 40 C.F.R. § 372.25.

7. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c) and 40 C.F.R. Part 19 authorize EPA

to assess a penalty of up to \$27,500 per day for each violation of Section 313 of EPCRA that occurred on or after January 31, 1997 but on or before March 15, 2004; up to \$32,500 per day for each violation of Section 313 of EPCRA that occurred after March 15, 2004 but on or before January 12, 2009; and up to \$37,500 per day for each violation after January 12, 2009.

C. COMPLAINANT'S ALLEGATIONS

8. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

9. At all times relevant to this matter, Respondent was an owner and operator of a "facility," as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4) and 40 C.F.R. § 372.3, which is located at 850 Commerce Drive, Madera, California (hereinafter "Facility").

10. At all times relevant to this matter, the Facility had 10 or more "full-time employees," as that term is defined at 40 C.F.R. § 372.3.

11. The Facility is classified in North American Industry Classification System code 325612, which falls under the general category of Manufacturing and Packaging of Polishes and Specialty Cleaning Preparations and within the North American Industry Classification System code 325 that corresponds to Standard Industrial Classification codes 20 through 39.

12. During calendar year 2006, Respondent processed approximately 66,348 pounds of nitric acid, a chemical listed under 40 C.F.R. § 372.65.

13. The quantity of nitric acid that Respondent processed at the Facility during calendar year 2006 exceeds the established threshold of 25,000 pounds set forth at 40 C.F.R. § 372.25(a).

14. Respondent failed to submit a Form R or A for nitric acid to the EPA Administrator and to the State of California on or before July 1, 2007 for calendar year 2006.

15. Respondent's failure to submit a timely Form R or A for the nitric acid that

Respondent processed at the Facility during calendar year 2006 constitutes one (1) violation of Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.

16. The EPA Enforcement Response Policy for EPCRA Section 313 dated August 10, 1992, as amended by the Civil Monetary Penalty Inflation Adjustment Rule at 40 C.F.R. Part 19, sets forth a penalty of SIX THOUSAND, FOUR HUNDRED DOLLARS (\$6,400) for this violation.

D. RESPONDENT'S ADMISSIONS

17. In accordance with 40 C.F.R. § 22.18(b)(2) and for purpose of this proceeding, Respondent (i) admits that EPA has jurisdiction over the subject matter of this CAFO and over Respondent; (ii) neither admits nor denies the specific factual allegations contained in Section I.C. of this CAFO; (iii) consents to any and all conditions specified in this CAFO and to the assessment of the civil administrative penalty under Section I.C. of this CAFO; (iv) waives any right to contest the allegation contained in Section I.C. of this CAFO; and (v) waives the right to appeal the proposed final order contained in this CAFO.

E. RESPONDENT'S CERTIFICATION

18. In executing this CAFO, Respondent certifies that, to the best of its knowledge, (1) it has now fully completed and submitted to EPA all of the required toxic chemical release inventory reporting forms in compliance with Section 313 of EPCRA and the regulations promulgated thereunder; and (2) it has complied with all other EPCRA requirements at all facilities under its control.

F. CIVIL ADMINISTRATIVE PENALTY

19. Respondent agrees to the assessment of a penalty in the amount of FOUR THOUSAND, FOUR HUNDRED AND EIGHTY DOLLARS (\$4,480) as final settlement of the civil claims against Respondent arising under EPCRA Section 313, as alleged in Section I.C. of

this CAFO.

20. Respondent shall pay the civil penalty amount required by Paragraph 19 within thirty (30) calendar days of the effective date of this CAFO. The civil penalty shall be paid by remitting a certified or cashier's check including the name and docket number of this case, for the amount, payable to "Treasurer, United States of America," (or be paid by one of the other methods listed below) and sent as follows:

Regular Mail:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, MO 63197-9000

Wire Transfers:

Wire transfers must be sent directly to the Federal Reserve Bank in New York City with the following information:

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"

Overnight Mail:

U.S. Bank

1005 Convention Plaza

Mail Station SL-MO-C2GL

ATTN Box 979077

St. Louis, MO 63101

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency
PNC Bank
808 17th Street, NW
Washington, DC 20074
ABA = 051036706
Transaction Code 22 – checking
Environmental Protection Agency
Account 31006
CTX Format

On Line Payment:

This payment option can be accessed from the information below:

www.pay.gov

Enter "sf01.1" in the search field

Open form and complete required fields

If clarification regarding a particular method of payment remittance is needed, contact the EPA Cincinnati Finance Center at 513-487-2091.

A copy of each check, or notification that the payment has been made by one of the other methods listed above, including proof of the date payment was made, shall be sent with a transmittal letter, indicating Respondent's name, the case title, and docket number, to both:

- a) Regional Hearing Clerk
Office of Regional Counsel (ORC-1)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105
- b) Russ Frazer
Toxics Office (CED-4)
U.S. Environmental Protection Agency, Region IX
75 Hawthorne Street
San Francisco, California 94105

21. If Respondent fails to pay the civil administrative penalty assessed above by the deadline specified in Paragraph 20, Respondent shall pay to Complainant the stipulated penalty of **SIX THOUSAND, FOUR HUNDRED DOLLARS (\$6,400)** rather than the assessed penalty, which shall become due and payable upon EPA's written request.

22. Respondent's failure to pay in full the civil administrative penalty by the deadline

specified in Paragraph 20 also may lead to any or all of the following actions:

a. The debt being referred to a credit reporting agency, a collection agency, or to the Department of Justice for filing of a collection action in the appropriate United States District Court. 40 C.F.R. §§ 13.13, 13.14, and 13.33. In any such collection action, the validity, amount, and appropriateness of the assessed penalty and of this CAFO shall not be subject to review.

b. The debt being collected by administrative offset (i.e., the withholding of money payable by the United States to, or held by the United States for, a person to satisfy the debt the person owes the Government) includes, but is not limited to, referral to the Internal Revenue Service for offset against income tax refunds. 40 C.F.R. Part 13, Subparts C and H.

c. EPA may (i) suspend or revoke Respondent's licenses or other privileges; (ii) suspend or disqualify Respondent from doing business with EPA or engaging in programs EPA sponsors or funds. 40 C.F.R. § 13.17.

d. In accordance with the Debt Collection Act of 1982 and 40 C.F.R. Part 13 interest, penalty charges, and administrative costs will be assessed against the outstanding amount that Respondent owes to EPA for Respondent's failure to pay the civil administrative penalty by the deadline specified in Paragraph 20. Interest will be assessed at an annual rate that is equal to the rate of current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate) as prescribed and published by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. 40 C.F.R. § 13.11(a)(1). Penalty charges will be assessed monthly at a rate of 6% per annum. 40 C.F.R. § 13.11(c). Administrative costs for handling and collecting Respondent's overdue debt will be based on either actual or average cost incurred, and will include both direct and indirect costs. 40 C.F.R. § 13.11(b). In addition, if this matter is referred to another department or agency (e.g., the Department of Justice, the Internal Revenue Service), that department or agency may assess its own administrative costs, in

addition to EPA's administrative costs, for handling and collecting Respondent's overdue debt.

23. In accordance with 40 C.F.R. § 22.18(c), this CAFO only resolves Respondent's liability for federal civil penalties for the violation and facts alleged in Section I.C. of this CAFO. Issuance of this CAFO does not constitute a waiver by EPA of its right to enforce the terms of this CAFO or to seek other civil or criminal relief for violations, if any, of any provision of federal law not specifically alleged in this Consent Agreement. Nothing in this CAFO shall relieve Respondent of its duty to comply with all applicable provisions of EPCRA, regulations promulgated thereunder, and other Federal, state or local laws, statutes, rules, regulations, ordinances or permits.

24. The provisions of this CAFO shall be binding upon Respondent and its officers, directors, employees, agents, servants, authorized representatives, successors, and assigns.

25. Each party shall bear its own costs, attorney's fees, and disbursements incurred in this action.

26. For purposes of federal, state, or local taxation, neither Respondent nor any other person shall claim a tax deduction for any civil penalty payment made pursuant to this CAFO.

27. This Consent Agreement constitutes the entire agreement between the Respondent and EPA. This CAFO is for the purpose of fully and finally settling the civil claims against Respondent arising from the facts alleged in Section I.C. of this CAFO. Full payment of the civil penalty and any applicable interest charges or late fees or penalties as set forth in this CAFO shall constitute full settlement and satisfaction of civil penalty liability against Respondent for the violation alleged in Section I.C. of this CAFO.

28. In accordance with 40 C.F.R. §§ 22.18(b)(3) and 22.31(b), the effective date of this CAFO shall be the date on which the accompanying Final Order, having been signed by the Regional Judicial Officer, is filed.

29. The undersigned representatives of each party to this Consent Agreement certify that each is duly authorized by the party whom he or she represents to enter into the terms and bind that party to it.

FOR RESPONDENT, DIVERSEY, INC.:

Date: 8/31/11 By: Maurice Becharo
MAURICE BECHARO
Vice President, Global Environment Health & Safety
Diversey, Inc.

FOR COMPLAINANT, EPA REGION IX:

Date: 9/26/11 By: Enrique Manzanilla
ENRIQUE MANZANILLA
Director, Communities and Ecosystems Division
U.S. Environmental Protection Agency, Region IX

CERTIFICATE OF SERVICE

I certify that the original fully executed Consent Agreement and Final Order ("CAFO"), Docket Number EPCRA-09-2011- 0018 , was filed this day with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, and that true and correct copies of the CAFO were sent to the Respondent at the following addresses:

Mr. Maurice Bechard
Vice President, Global Environmental H&S
Diversey, Inc.
8310 16th Street
PO Box 902
Sturtevant, WI 53177

Certified Mail No: 7010 1060 0002 0234 7007

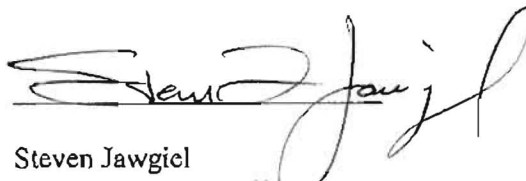
Bryan K. Goodwin
Regional Hearing Clerk
Region IX, EPA
Office of Regional Counsel

Date

II. FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order be entered and that Respondent shall comply with the terms set forth in the Consent Agreement and pay the civil penalty amount of **FOUR THOUSAND, FOUR HUNDRED AND EIGHTY DOLLARS (\$4,480)** in accordance with the terms set forth in the Consent Agreement.

Date: 09/27/11



Steven Jawgiel
Regional Judicial Officer
U.S. EPA, Region IX

re: EPCRA - 09-2011-0018

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order with **Diversey, Inc. (Docket #: EPCRA-09-2011-0018)** was filed with the Regional Hearing Clerk, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, and that a true and correct copy of the same was sent to the following parties:

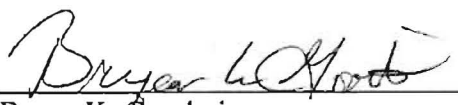
A copy was mailed via CERTIFIED MAIL to:

Maurice Bechard
Vice President, Global Environmental H&S
Diversey, Inc.
8310 16th Street
PO Box 902
Sturtevant, WI 53177

CERTIFIED MAIL NUMBER: 7010-1060-0002-0234-7007

An additional copy was hand-delivered to the following U.S. EPA case attorney:

Maya Kuttan, Esq.
Office of Regional Counsel
U.S. EPA, Region IX
75 Hawthorne Street
San Francisco, CA 94105



Bryan K. Goodwin
Regional Hearing Clerk
U.S. EPA, Region IX

9/28/11

Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IX

75 Hawthorne Street

San Francisco, CA 94105-3901

SEP 26 2011

Certified Mail No. 7010 1060 0002 0234 7007

Return Receipt Requested

Re: EPCRA-09-2011- 0018

Maurice Bechard
Vice President, Global Environmental H&S
Diversey, Inc.
8310 16th Street
PO Box 902
Sturtevant, WI 53177

Dear Mr. Bechard:

Enclosed please find your copy of the fully executed Consent Agreement and Final Order, pursuant to 40 C.F.R. Sections 22.13 and 22.18, which contains the terms of the settlement reached with the EPA Region IX Toxic Chemical Release Inventory Program. Your completion of all actions enumerated in the Consent Agreement and Final Order will close this case.

If you have any questions, please contact Russ Frazer at (415) 947-4220 or have your attorney contact Maya Kuttan at (415) 972-3897.

Sincerely,

A handwritten signature in black ink, appearing to read "Enrique Manzanilla".

Enrique Manzanilla, Director
Communities and Ecosystems Division

Enclosure