



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

MAR 03 2008

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

J. Billy Pirkle, CSP, CHMM
Director EH&S
Crop Production Services
6 Executive Drive
Collinsville, IL 61046

Re: Royster-Clark, Inc., Lanark, Illinois, Consent Agreement and Final Order
Docket No: CERCLA-05-2008-0004

Dear Mr. Pirkle:

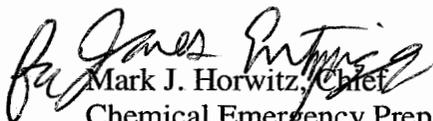
Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on MAR - 3 2008.

Please pay the civil penalty in the amount of \$10,478.00 in the manner prescribed in paragraph 26, and reference you check with the billing document number 2750830B005 and the docket number CERCLA-05-2008-0004.

Your payments are due on APR - 2 2008.

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Robert L. Thompson, Associate Regional Counsel, at (312) 353-6700. 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

Robert L. Thompson (w/ enclosure)

Jon England, Legal counsel (w/ enclosure)
Kathy Allen
IL SERC

Marcy Toney
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**Royster-Clark, Inc.
Lanark, Illinois**

) **Docket No. CERCLA-05-2008-0004**
)
) **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 2, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).
3. Respondent is Royster-Clark, Inc. a corporation doing business in the State of Illinois.
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 facts or law is in their interest and in the public interest.

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6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Royster-Clark, Inc. admits the jurisdictional allegations in this CAFO and neither admits or denies the factual allegations and violations alleged in paragraphs 11 through 24 in this CAFO.

8. Royster-Clark, Inc. 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 Collections Improvements 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 for violations 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. At all times relevant to this CAFO, Respondent was in charge of the Facility.

13. Respondent's Facility consists of buildings, structures, equipment, storage container, motor vehicle, rolling stock, or any site or area where a hazardous substance has been deposited, stored, or otherwise come to be located.

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

15. Anhydrous ammonia (CAS # 7664-41-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

16. Anhydrous ammonia (CAS# 7664-41-7) has a reportable quantity (RQ) of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

17. On October 19, 2005, at or about 8:20 a.m., a release occurred from Respondent's Facility of approximately 800 pounds of anhydrous ammonia (the Release).

18. In a 24 hour time period, the Release of anhydrous ammonia exceeded 100 pounds.

19. During the Release, approximately 800 pounds spilled, leaked, poured, discharged, escaped, dumped, or disposed, into the land surface or subsurface strata, or 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 October 19, 2005, at approximately 8:30 a.m.

22. Respondent notified the NRC of the Release on October 19, 2005, at 11:05 a.m.

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

24. 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).

Civil Penalty

25. In consideration of facts and circumstances of the case, the cooperation of the Respondent, and Respondent's willingness to quickly resolve this matter, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$10,478.

26. Within 30 days after the effective date of this CAFO, Respondent must pay a \$10,478 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:

US 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 Royster-Clark, Inc., the docket number of the CAFO, and the billing document number 2750830B005.

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 Boulevard
Chicago, IL 60604

James Entzminger, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
77 West Jackson Boulevard
Chicago, IL 60604

Robert L. Thompson, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

28. Alternatively, Respondent may pay by wire transfer to Federal Reserve Bank, Routing/ABA Number 021030004, for Account Number 68010727, U.S. EPA. The wire payment must have the billing document number 2750830B005.

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

30. 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.

31. 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 not paid within 90 days of the date that this CAFO had been entered by the Regional Hearing Clerk.

General Provisions

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

33. 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.

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

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 and its successors, and assigns.

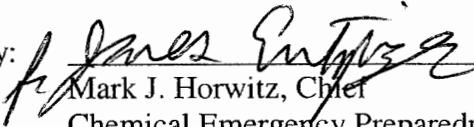
37. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

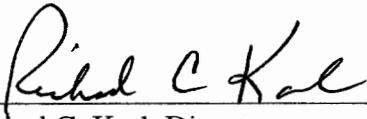
38. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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

SIGNATORIES

U.S. Environmental Protection Agency, Complainant

Date: February 22, 2008 By: 
Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section
Emergency Response Branch 1
Superfund Division
U.S. EPA Region 5

Date: 2-26-08 By: 
Richard C. Karl, Director
Superfund Division
U.S. EPA Region 5

Royster-Clark, Inc., Respondent

Date: 2/20/2008 By: 
Signature
J. BILLY PIRKLE
Printed Name and Title

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IN THE MATTER OF:
Royster-Clark, Inc.
Lanark, Illinois
Docket No. CERCLA-05-2008-0004**

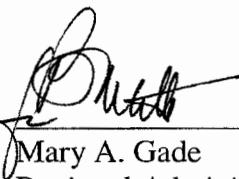
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IN THE MATTER OF:
Royster-Clark, Inc.
Lanark, Illinois
Docket No. CERCLA-05-2008-0004**

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. IT IS SO ORDERED.

Date: 2-28-08

By: _____


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

Certificate of Service

I, James Entzminger, certify that I hand delivered one original and one copy of the Consent Agreement and Final Order, docket number CERCLA-05-2008-0004 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served via interoffice mail, a copy on the Regional Judicial Officer, and mailed one original by first-class, postage prepaid, certified mail, return receipt requested, to Royster-Clark, Inc. by placing them in the custody of the United States Postal Service addressed as follows:

**J. Billy Pirkle, CSP, CHMM
Director EH&S
Crop Production Services
6 Executive Drive
Collinsville, IL 61046**

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on the 3 day of March, 2008


James Entzminger
U.S. Environmental Protection Agency
Region 5

**Consent Agreement and Final Order
IN THE MATTER OF:
Royster-Clark, Inc.
Lanark, Illinois
Docket No.**