



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

SEP 21 2007

REPLY TO THE ATTENTION OF:

LC-8J

CERTIFIED MAIL

Receipt No. 7001 0320 0006 0185 8511

Richard Sheard, President
Columbus Chemical Industries, Inc.
N 4335 Temkin Road
Columbus, Wisconsin 53925

Consent Agreement and Final Order, Docket No. EPCRA-05-2007-0033

Dear Mr. Sheard:

I have enclosed an original signed copy of a fully executed Consent Agreement and Final Order resolution of the above case. This document was filed on September 21, 2007 with the Regional Hearing Clerk.

The civil penalty in the amount of \$10,725 is to be paid in the manner prescribed in paragraph 43 and 44. Please be certain that the number **BD** 2750744E030 and the docket number are written on both the transmittal letter and on the check. The payment is due by October 22, 2007.

Thank you for your cooperation in resolving this matter.

Sincerely,

Maynard Shaw
Pesticides and Toxics Compliance Section

Enclosures

cc: Marcy Toney, Regional Judicial Officer/C-14J (w/Encl.)
Susan Persomo, ORC/C-14J (w/Encl.)
Eric Volck, Cincinnati Finance/MWD (w/Encl.)

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. EPCRA-05-2007-0033
)	
Columbus Chemical Industries, Inc.)	Proceeding to Assess a Civil Penalty
Columbus, Wisconsin,)	Under Section 325(c) of the Emergency
)	Planning and Community Right-to-Know
)	Act of 1986, 42 U.S.C. § 11045(c)
Respondent.)	
_____)	

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V
2007 SEP 11 PM 2:16

Consent Agreement and Final Order

Preliminary Statement

1. This is an administrative action commenced and concluded under Section 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. §11045(c), and Section 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, and the delegated authority to settle this matter, is the Director of the Land and Chemicals Division, United States Environmental Protection Agency (U.S. EPA), Region 5.
3. Respondent is Columbus Chemical Industries, Inc., a corporation doing business in the State of Wisconsin.
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. 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.

9. Respondent certifies that it is in compliance with Section 313 of EPCRA, 42 U.S.C. § 11023.

Statutory and Regulatory Background

10. Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. §§ 372.22 and 372.30 require the owner or operator of a facility that has 10 or more full-time employees; is covered by certain Standard Industrial Classification (SIC) codes; meets one of the criteria set forth in 40 C.F.R. § 372.22(b)(1)-(3); and manufactured, processed, or otherwise used a toxic chemical in an amount in excess of an applicable threshold quantity of that chemical listed under Section 313(f) of EPCRA and in 40 C.F.R. §§ 372.25, 372.27 and 372.28, during the calendar year, to complete and submit a toxic chemical release inventory form (Form R) to the Administrator of U.S. EPA and to the state in which the subject facility is located by July 1 for each toxic chemical manufactured, processed, or otherwise used in quantities exceeding the established threshold during the preceding calendar year.

11. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.25, except as provided in 40 C.F.R. §§ 372.27 and 372.28, the reporting threshold amount for a toxic chemical manufactured or processed at a facility is 25,000 pounds for calendar years

including and subsequent to 1989. The reporting threshold for a toxic chemical otherwise used at a facility is 10,000 pounds for calendar years including and subsequent to 1987.

12. As set forth in Section 313(f) of EPCRA, 42 U.S.C. § 11023(f), and 40 C.F.R. § 372.28, the reporting threshold amount for Mercury and Mercury Compounds manufactured, processed, or otherwise used at a facility is 10 pounds for calendar years including and subsequent to 2001.

13. Section 325(c), of EPCRA, 42 U.S.C. § 11045(c), authorizes the Administrator of U.S. EPA to assess a civil penalty of up to \$25,000 per day for each violation of Section 313 of EPCRA. The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 (1990), as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 (1996), required federal agencies to issue regulations adjusting for inflation the maximum civil penalties that can be imposed pursuant to each agency's statutes. The U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation of Section 313 of EPCRA that occurred from January 31, 1997 through March 15, 2004, and may assess a civil penalty of up to \$32,500 per day for each violation of Section 313 of EPCRA that occurred after March 15, 2004, pursuant to Section 325(c)(1) and (3), of EPCRA, 42 U.S.C. § 11045(c) (1) and (3), and 40 C.F.R. Part 19.

Factual Allegations and Alleged Violations

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

15. At all times relevant to this CAFO, Respondent was an owner or operator of the facility located at N4335 Temkin Road, Columbus, Wisconsin 53925 (facility).

16. At all times relevant to this CAFO, Respondent had 10 or more "full-time employees," as defined at 40 C.F.R. § 372.3, and was an employer at the facility.

17. Respondent's facility consists of a building, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

18. Respondent's facility is a "facility" as that term is defined at Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

19. The facility has a SIC code of 5169, a covered SIC code as defined at Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.22.

Count I

20. Complainant incorporates paragraphs 10 through 19 above as if set forth in this paragraph.

21. Mercury is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. §372.65.

22. The reporting threshold for Mercury that was manufactured (including imported), processed, or otherwise used during the 2001 calendar year was 10 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. 372.28.

23. During the 2001 calendar year, Respondent's facility processed 110 pounds of Mercury, CAS No.7439-97-6.

24. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to report to the Administrator of U.S. EPA and to Wisconsin on or before July 1, 2002, that it processed 110 pounds of Mercury, CAS No.7439-97-6 in the 2001 calendar year.

25. Respondent's failure to report to the Administrator of U.S. EPA its production of Mercury for the 2001 calendar year on or before July 1, 2002 violates Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count II

26. Complainant incorporates paragraphs 10 through 19 above as if set forth in this paragraph.

27. Mercury Compounds is a chemical category identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. §372.65 (c).

28. The reporting threshold for Mercury Compounds that were manufactured (including imported), processed, or otherwise used during the 2001 calendar year was 10 pounds. 42 U.S.C. § 11023(f) and 40 C.F.R. 372.28.

29. During the 2001 calendar year, Respondent's facility processed 132 pounds of Mercury Compounds, CAS No. N458.

30. Section 313 of EPCRA, 42 U.S.C. § 11023, required Respondent to submit to the Administrator of U.S. EPA and to Wisconsin a Form R for Mercury Compounds for the 2001 calendar year on or before July 1, 2002.

31. Respondent did not submit to the Administrator of U.S. EPA and to Wisconsin a Form R for Mercury Compounds for the 2001 calendar year on or before July 1, 2002.

32. On October 1, 2004, Respondent submitted to the Administrator of U.S. EPA a Form R for Mercury Compounds for the 2001 calendar year.

33. Respondent's failure to submit timely to the Administrator of U.S. EPA a Form R for Mercury Compounds for the 2001 calendar year violates Section 313 of EPCRA, 42 U.S.C. § 11023, and 40 C.F.R. § 372.30.

Count III

34. Complainant incorporates paragraphs 10 through 19 above as if set forth in this paragraph.

35. Methanol is a chemical identified at Section 313(c) of EPCRA, 42 U.S.C. § 11023(c), and listed at 40 C.F.R. §372.65.

36. The reporting threshold for Methanol that is processed during the 2001 calendar year is 25,000 pounds. 42 U.S.C. § 11023(f), and 40 C.F.R. §372.25(a).

37. During the 2001 calendar year, Respondent's facility processed 73,087 pounds of Methanol, CAS No. 67-56-1.

38. Section 313 of EPCRA, 42 U.S.C. § 11023 required Respondent to submit to the Administrator of U.S. EPA and to Wisconsin a Form R for Methanol for the 2001 calendar year on or before July 1, 2002.

39. Respondent failed to submit to the Administrator of U.S. EPA and to Wisconsin a Form R for Methanol for the 2001 calendar year on or before July 1, 2002.

40. On October 1, 2004, Respondent submitted to the Administrator of U.S. EPA a Form R for Methanol for the 2001 calendar year

41. Respondent's failure to submit timely to the Administrator of U.S. EPA a Form R for Methanol for the 2001 calendar year violates Section 313 of EPCRA, 42 U.S.C. § 11023 and 40 C.F.R. § 372.30.

Civil Penalty

42. Pursuant to Section 325 of EPCRA, 42 U.S.C. § 11045, Complainant determined that an appropriate civil penalty to settle this action is \$10,725. 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 Section 313 of the Emergency Planning*

and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (August 10, 1992).

43. Within 30 days after the effective date of this CAFO, Respondent shall pay the \$10,725 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

U.S. EPA, Region 5
P.O. Box 371531
Pittsburgh, PA 15251-7531

44. A transmittal letter, stating Respondent's name, 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. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Maynard Shaw (DT-8J)
Pesticides and Toxics Compliance Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Susan Perdomo (C-14J)
Associate Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

46. If Respondent does not timely pay the civil penalty due under paragraph 43, above, 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.

47. 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 90 days past due.

General Provisions

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

49. 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.

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

51. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 313 of EPCRA.

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

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

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

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

In The Matter Of:
Columbus Chemical Industries, Inc.
Docket No. EPCRA-05-2007-0033

Columbus Chemical Industries, Inc., Respondent

8/29/07
Date

Richard Sheard
Richard Sheard, President

United States Environmental Protection Agency, Complainant

9/14/07
Date

Margaret M. Guerriero
Margaret M. Guerriero, Director
Land and Chemicals Division

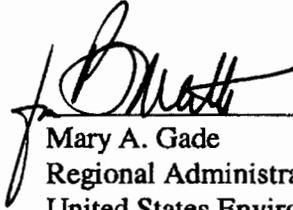
RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V
2007 SEP 21 PM 2:17

In The Matter Of:
Columbus Chemical Industries, Inc.
Docket No. EPCRA-05-2007-0033

Final Order

The foregoing Consent Agreement is hereby approved and incorporated by reference into this Order. Respondent is hereby ordered to comply with the terms of the above Consent Agreement effective immediately upon the filing with the Regional Hearing Clerk.

9-19-07
Date



Mary A. Gade
Regional Administrator
United States Environmental Protection Agency
Region 5

RECEIVED
REGIONAL HEARING CLERK
US EPA REGION V
2007 SEP 21 PM 2:17

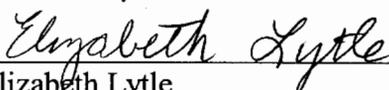
CERTIFICATE OF SERVICE

I hereby certify that the original signed copy of the Consent Agreement and Final Order in resolution of the civil administrative action involving Columbus Chemical Industries, Inc., was filed on September 21, 2007, with the Regional Hearing Clerk (E-13J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, and that I mailed by Certified Mail, Receipt No. 7001 0320 0006 0185 8511, a copy of the original to the Respondents:

Richard Sheard, President
Columbus Chemical Industries, Inc.
N 4335 Temkin Road
Columbus, Wisconsin 53925

and forwarded copies (intra-Agency) to:

Marcy Toney, Regional Judicial Officer, ORC/C-14J
Susan Persomo, Counsel for Complainant/C-14J
Eric Volck, Cincinnati Finance/MWD (w/Encl.)



Elizabeth Lytle
Pesticides and Toxics Compliance Section
U.S. EPA - Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Docket No. **EPCRA-05-2007-0033**

2007 SEP 21 PM 2:16
RECEIVED
REGIONAL HEARING CLERK
US EPA REGION 5