

FILED

**UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION IX**

2009 SEP 28 PM 4: 34

U.S. EPA. REGION IX
REGIONAL HEARING CLERK

Docket No.

IN THE MATTER OF:

Cyanco

Respondent.

CERCLA-09-2012- 0002
EPCRA-09-2012- 0013

**CONSENT AGREEMENT
AND
FINAL ORDER PURSUANT TO
40 CFR §§ 22.13 and 22.18**

CONSENT AGREEMENT

A. PRELIMINARY STATEMENT

1. This is a civil administrative enforcement action instituted pursuant to Section 109 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9609, Section 325 of the Emergency Planning and Community Right-To-Know Act of 1986 ("EPCRA"), 42 U.S.C. § 11045, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 CFR Part 22, as revised by 64 Fed. Reg. 141 (July 23, 1999). Complainant is the United States Environmental Protection Agency, Region IX ("EPA"). Respondent is Cyanco, a corporation organized under the laws of the state of Nevada ("Respondent").

2. This Consent Agreement and Final Order Pursuant to 40 CFR Sections 22.13 and 22.18, ("CA/FO"), simultaneously commences and concludes this proceeding, wherein EPA alleges that Respondent, at the Facility, violated Section 304 of EPCRA, 42 U.S.C. § 11004, Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations adopted pursuant thereto.

B. STATUTORY AND REGULATORY FRAMEWORK

3. Any person in charge of a facility is required under CERCLA Section 103(a), 42 U.S.C. § 9603(a), to immediately notify the National Response Center (“NRC”) as soon as the person in charge has knowledge of a release of a Hazardous Substance (“HS”) from such facility in an amount equal to or greater than the Reportable Quantity (“RQ”).

4. Section 304 of EPCRA, 42 U.S.C. § 11004, requires the owner or operator of a facility at which a hazardous chemical is produced, used, or stored to notify immediately the appropriate governmental entities of any release that requires notification under Section 103 of CERCLA and of any release in an amount that meets or exceeds its RQ of an Extremely Hazardous Substance (“EHS”) listed under Section 302 of EPCRA, 42 U.S.C. § 11002. The notification must be given to the local emergency planning committee (“LEPC”) and to the state emergency planning commission (“SERC”) for each area and state likely to be affected by the release.

C. GENERAL ALLEGATIONS

5. Section 109 of CERCLA, 42 U.S.C. § 9609, authorizes the President to issue orders assessing civil penalties for any violations of Section 103 of CERCLA, 42 U.S.C. § 9603.

6. Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), authorizes the Administrator of EPA to assess civil penalties for any violation of Section 304 of EPCRA, 42 U.S.C. § 11004.

7. The Administrator of EPA has delegated these authorities under CERCLA and EPCRA to the Regional Administrators by EPA delegations 14-31 and 22-3-A, respectively.

8. The Regional Administrator, EPA Region IX, has delegated these authorities to the Director of the Superfund Division with delegations R9 1290.16 and R9 1290.18, respectively.

9. Respondent is, and at all times referred to herein was, a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

10. Respondent owns and operates a facility located at at 5505 Cyanco Drive in

Winnemucca, Nevada (the "Facility"), which is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

Respondent creates sodium cyanide.

11. The SERC for the state likely to be affected by a release from the Facility is the Nevada State Emergency Response Commission ("NV SERC")

12. The LEPC for the area likely to be affected by a release from the Facility is the Humboldt County LEPC.

13. At all times relevant to this CA/FO, Respondent has been the owner and/or operator, and the person in charge, of the Facility.

14. At all times relevant to this CA/FO, the Facility used or stored hydrogen cyanide, Chemical Abstract Service ("CAS") No. 74-90-8, and sodium cyanide CAS No. 143-33-9, which are hazardous chemicals under Section 311(e) of EPCRA, 42 U.S.C. § 11021(c).

15. The Administrator of the EPA, as required under Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), has published a list of substances designated as "Hazardous Substances," which, when released into the environment, may present substantial danger to public health or welfare or the environment, and has promulgated regulations establishing the RQ of certain Hazardous Substances, the releases of which are required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). This list, including the corresponding RQs for each Hazardous Substance, is codified at 40 CFR Part 302, Table 302.4.

16. The Administrator of the EPA, as required under Section 302 of EPCRA, 42 U.S.C. § 11002, has published a list of substances designated as "Extremely Hazardous Substances," which, when released into the environment, may present substantial danger to public health or welfare or the environment, and has promulgated regulations establishing the RQ of an Extremely Hazardous Substance, the release of which is required to be reported under Section 304 of EPCRA, 42 U.S.C. § 11004. This list, including the corresponding RQs for the Extremely Hazardous Substances, is codified at 40 CFR Part 355, Appendices A and B.

17. Hydrogen cyanide and sodium cyanide are "Hazardous Substances" as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and they are also "Extremely Hazardous Substances" as defined under Section 329(3) of EPCRA, 42 U.S.C. § 11049(3). Under both statutes, hydrogen cyanide and sodium cyanide each have an RQ of ten (10) pounds, as designated in 40 C.F.R. Part 302, Table 302.4 and 40 C.F.R. Part 355, Appendices A and B.

D. ALLEGED VIOLATIONS

COUNTS I

(Violation of Section 103 of CERCLA for the Hydrogen Cyanide Release)

18. Paragraphs 1 through 17 above are incorporated herein by this reference as if they were set forth here in their entirety.

19. On February 1, 2010, more than 10 pounds (the RQ) of hydrogen cyanide was released from the Facility.

20. Respondent had actual or constructive knowledge of the release of hydrogen cyanide which occurred on February 1, 2010, shortly after the time that it occurred, 1:45pm.

21. Respondent did not notify the NRC until February 2, 2010 at 3:00 pm, approximately 29 hours after the release occurred.

22. By failing to immediately notify the NRC as soon as it had knowledge of this release of an RQ of hydrogen cyanide, Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

23. Respondent is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

COUNT II

(Violation of Section 304 of EPCRA for the Hydrogen Cyanide Release)

24. Paragraphs 1 through 23 above are incorporated herein by this reference as if they were set forth here in their entirety.

25. On February 1, 2010, more than 10 pounds (the RQ) of hydrogen cyanide was released

from the Facility.

26. Respondent had actual or constructive knowledge of the release of hydrogen cyanide which occurred on February 1, 2010, shortly after the time that it occurred, 1:45pm.

27. Respondent did not notify the Nevada Division of Environmental Protection ("NDEP") until February 2, 2010 at 3:00 pm, approximately 29 hours after the release occurred.

Respondent did not notify NV SERC or Humboldt County LEPC itself.

28. By failing to immediately notify NV SERC and Humboldt County LEPC as soon as it had knowledge of this release of an RQ of hydrogen cyanide, Respondent violated Section 304 of EPCRA, 42 U.S.C. § 11004.

29. Respondent is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

COUNT III

(Violation of Section 103 of CERCLA for the Sodium Cyanide Release)

30. Paragraphs 1 through 29 above are incorporated herein by this reference as if they were set forth here in their entirety.

31. On January 2, 2011, more than 10 pounds (the RQ) of sodium cyanide was released from the Facility.

32. Respondent had actual or constructive knowledge of the release of sodium cyanide which occurred on January 2, 2011, shortly after the time that it occurred.

33. Respondent did not notify the NRC until March 29, 2011, approximately 87 days after the release occurred.

34. By failing to immediately notify the NRC as soon as it had knowledge of this release of an RQ of sodium cyanide, Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

35. Respondent is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

E. CIVIL PENALTY

36. Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045, as adjusted by the Civil Monetary Penalty Inflation Adjustment Rule, 73 Fed. Reg. 75340 (Dec. 11, 2008), authorize a civil penalty of up to \$37,500 per day for a violation of Section 103 of CERCLA or Section 304 of EPCRA occurring after January 12, 2009. *See* Table 1 of 40 CFR §19.4.

37. Based on the facts alleged herein and upon all the factors which the Complainant considers pursuant to 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* (“ERP”), including the nature, extent, and gravity of the violations, the Respondent’s ability to pay, prior history of violations, degree of culpability, and any economic benefit, and such other matters as justice may require, the Complainant proposes that the Respondent be assessed, and Respondent agrees to pay **FIFTY-TWO THOUSAND SIX HUNDRED DOLLARS (\$52,600)**, as the civil penalty for the violations alleged herein. The proposed penalty was calculated in accordance with the ERP.

F. ADMISSIONS AND WAIVERS OF RIGHTS

38. For purposes of this proceeding, Respondent admits and agrees that EPA has jurisdiction and authority over the subject matter of the action commenced in this CA/FO and over Respondent pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, Section 325 of EPCRA, 42 U.S.C. § 11045, and 40 CFR §§ 22.4 and 22.37. Further, for the purposes of this proceeding, Respondent admits to the general allegations of facts and law set forth in Sections B and C of this CA/FO. Respondent consents to and agrees not to contest EPA’s jurisdiction and authority to enter into and issue this CA/FO and to enforce its terms. Further, Respondent will not contest EPA’s jurisdiction and authority to compel compliance with this CA/FO in any enforcement proceedings, either administrative or judicial, or to impose sanctions for violations of this CA/FO.

39. Respondent neither admits nor denies any allegations of fact or law set forth in Section D of this CA/FO. Respondent hereby waives any rights Respondent may have to contest the allegations set forth in this CA/FO, waives any rights Respondent may have to a hearing on any issue relating to the factual allegations or legal conclusions set forth in this CA/FO, including without limitation a hearing pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, or Section 325 of EPCRA, 42 U.S.C. § 11045, and hereby consents to the issuance of this CA/FO without adjudication. In addition, Respondent hereby waives any rights Respondent may have to appeal the Final Order attached to this Consent Agreement and made part of this CA/FO.

G. PARTIES BOUND

40. This CA/FO shall apply to and be binding upon Respondent and its officers, directors, employees, successors and assigns, until such time as the civil penalty required under Section E has been paid in accordance with Section J and any delays in performance and/or stipulated penalties have been resolved. At such time as those matters are concluded, this CA/FO shall terminate and constitute full settlement of the violations alleged herein.

41. No change in ownership or corporate, partnership or legal status relating to the Facility will in any way alter Respondent's obligations and responsibilities under this CA/FO.

42. Until termination of this CA/FO, Respondent shall give notice of this CA/FO to any successor in interest prior to transfer of ownership or operation of the Facility and shall notify EPA within seven (7) days prior to such transfer.

43. The undersigned representative of Respondent hereby certifies that he or she is fully authorized by Respondent to enter into this CA/FO, to execute and to legally bind Respondent to it.

H. CERTIFICATION OF COMPLIANCE

44. Upon signing this CA/FO, Respondent certifies to EPA that the Facility has come into compliance with the requirements of Section 103 of CERCLA and Section 304 of EPCRA that formed the basis for the violations alleged in Section D, and that the Facility is now in

compliance with the relevant current reporting obligations under Section 103 of CERCLA and 304 of EPCRA.

45. The signatory for Respondent certifies under penalty of law that this certification of compliance is based upon true, accurate and complete information, which the signatory can verify personally or regarding which the signatory has inquired of the person or persons directly responsible for gathering the information.

I. PAYMENT OF CIVIL PENALTY

46. Respondent hereby consents to the assessment of and agrees to pay a civil penalty of **FIFTY-TWO THOUSAND SIX HUNDRED DOLLARS (\$52,600)** in settlement of the alleged violations set forth in Section D above. This CA/FO constitutes a settlement of all claims for the violations of Section 103 of CERCLA and Section 304 of EPCRA alleged in Section D above.

47. Within thirty (30) days of the effective date of this CA/FO Respondent shall submit a certified or cashier's check in the amount of **FIFTY-TWO THOUSAND SIX HUNDRED DOLLARS (\$52,600)** payable to "U.S. EPA Hazardous Substance Superfund," which shall be mailed as follows:

Regular Mail:

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

Overnight Mail:

U.S. Bank
1005 Convention Plaza
Mail Station SL-MO-C2GL
ATTN Box 979077
St. Louis, MO 63101
Contact: Natalie Pearson (314-418-4087)

Alternatively, payment may be made by electronic transfer as provided below:

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”

ACH (also known as REX or remittance express):

Automated Clearinghouse (ACH) for receiving US currency

PNC Bank

808 17th Street, NW

Washington, DC 20074

Contact – Jesse White (301-887-6548)

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 “sfo1.1” in the search field

Open form and complete required fields

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:

Bryan K. Goodwin

Regional Hearing Clerk (RC-1)

U.S. Environmental Protection Agency - Region 9

75 Hawthorne Street

San Francisco, CA 94105

and

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Travis Cain (SFD-9-3)
Superfund Division
U.S. Environmental Protection Agency - Region 9
75 Hawthorne Street
San Francisco, CA 94105.

48. In accordance with the Debt Collection Act of 1982 and U.S. Treasury directive (TFRM 6-8000), failure to send the penalty so that it is received by the due date will result in imposition of interest from the effective date of this CA/FO at the current interest rate published by the U.S. Treasury, as described at 40 CFR §13.11. In addition, a twelve percent (12%) per annum penalty will be applied on any principal amount not paid within ninety (90) days of the due date.

49. The penalties specified in this CA/FO shall represent civil penalties assessed by EPA and shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

J. DELAY IN PERFORMANCE / STIPULATED PENALTIES

50. In the event Respondent fails to meet any requirement set forth in this CA/FO, Respondent shall pay stipulated penalties as set forth below. Compliance by Respondent shall include completion of any activity under this CA/FO in a manner acceptable to EPA and within the specified time schedules in and approved under this CA/FO.

51. For failure to submit a payment to EPA by the time required in this CA/FO: FIVE HUNDRED DOLLARS (\$500) per day for the first to fifteenth day of delay, ONE THOUSAND DOLLARS (\$1,000) per day for the sixteenth to thirtieth day of delay, and FIVE THOUSAND DOLLARS (\$5,000) per day for each day of delay thereafter.

52. The determination of whether Respondent has satisfactorily complied with the terms of this CA/FO and the determination of whether Respondent has made a good faith, timely effort to complete the tasks required by this CA/FO, are within the sole discretion of the Division Director, Superfund Division, EPA Region IX. The decision of the Division Director, Superfund Division, EPA Region IX is not reviewable in any forum.

53. Payment of stipulated penalties shall be made in accordance with the procedure set forth

for payment of penalties in Paragraph 47.

54. If a stipulated penalty is not paid in full, interest shall begin to accrue on the unpaid balance fifteen days after it is due at the current rate published by the United States Treasury, as described at 40 CFR § 13.11. Complainant reserves the right to take any additional action, including but not limited to, the imposition of civil penalties, to enforce compliance with this CA/FO or with CERCLA or EPCRA and their implementing regulations.

55. The payment of stipulated penalties specified in this Section shall not be deducted by Respondent or any other person or entity for federal, state or local taxation purposes.

56. The payment of stipulated penalties shall not alter in any way Respondent's obligation to complete the performance required hereunder.

57. The stipulated penalties set forth in this Section do not preclude EPA from pursuing any other remedies or sanctions which may be available to EPA by reason of Respondent's failure to comply with any of the requirements of this CA/FO.

58. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this CA/FO.

K. RESERVATION OF RIGHTS

59. EPA expressly reserves all rights and defenses that it may have.

60. EPA hereby reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, including the right to require that Respondent perform tasks in addition to those required by this CA/FO. EPA further reserves all of its statutory and regulatory powers, authorities, rights and remedies, both legal and equitable, which may pertain to Respondent's failure to comply with any of the requirements of this CA/FO, including without limitation, the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045, and Section 108 of CERCLA, 42 U.S.C. § 9609, or any other statutory, regulatory or common law enforcement authority of the United States. This CA/FO shall not be construed as a covenant not to sue, release, waiver or limitation of any rights, remedies, powers or authorities, civil or

criminal, which EPA has under EPCRA or CERCLA or any other statutory, regulatory or common law enforcement authority of the United States, except as otherwise set forth herein.

61. Compliance by Respondent with the terms of this CA/FO shall not relieve Respondent of its obligations to comply with any applicable local, state or federal laws and regulations.

62. The entry of this CA/FO and Respondent's consent to comply shall not limit or otherwise preclude EPA from taking additional enforcement actions should EPA determine that such actions are warranted except as they relate to Respondent's liability for federal civil penalties for the specific alleged violations and facts as set forth in Section D of this CA/FO. Full payment of the penalty proposed herein shall resolve Respondent's liability for federal civil penalties for the violations and facts alleged herein.

63. This CA/FO is not intended to be nor shall it be construed as a permit. This CA/FO does not relieve Respondent of any obligation to obtain and comply with any local, State or federal permits.

L. OTHER CLAIMS

64. Nothing in this CA/FO shall constitute or be construed as a release from any other claim, cause of action or demand in law or equity by or against any person, firm, partnership, entity or corporation for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous constituents, hazardous substances, hazardous wastes, pollutants, or contaminants found at, taken to, or taken from the Facility.

M. MISCELLANEOUS

65. This CA/FO may be amended or modified only by written agreement executed by both EPA and Respondent.

66. The headings in this CA/FO are for convenience of reference only and shall not affect interpretation of this CA/FO.

67. Each party shall bear its own attorneys' fees, costs, and disbursements incurred in this proceeding.

68. In accordance with 40 CFR §§ 22.18(b)(3) and 22.31(b), this CA/FO shall be effective on the date that the Final Order contained in this CA/FO, having been approved and issued by either the Regional Judicial Officer or Regional Administrator, is filed.

IT IS SO AGREED.

For Respondent CYANCO

8/29/2012

Date



Name, Title: GREGORY O. MITCH
VP - OPERATIONS
Cyanco

27 September 2012

Date



Per Jane Diamond, Director
Superfund Division
U.S. Environmental Protection Agency, Region IX

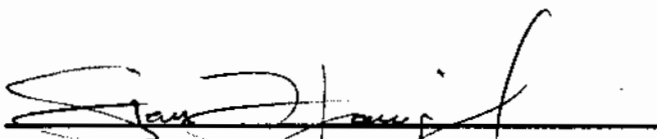
FINAL ORDER

IT IS HEREBY ORDERED that this Consent Agreement and Final Order ("CA/FO") (Docket No. EPCRA 9-2012-⁰⁰¹³ and Docket No. CERCLA 9-2012-⁰⁰⁰⁷ be entered and that Respondent pay a civil penalty of **FIFTY-TWO THOUSAND SIX HUNDRED DOLLARS (\$52,600)**.

THIS FINAL ORDER SHALL BE EFFECTIVE UPON FILING WITH THE HEARING CLERK.

09/26/12

Date



Steven Jawgiel
Regional Judicial Officer
United States Environmental Protection Agency,
Region IX

CERTIFICATE OF SERVICE

I certify that the original of the fully executed Consent Agreement and Final Order in the matter of CYANCO (Docket #: EPCRA-09-2012-0013/CERCLA-09-2012-0002) 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:

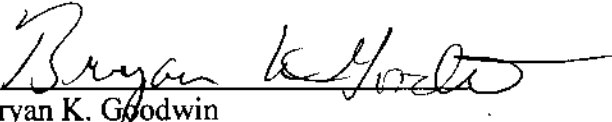
A copy was mailed via CERTIFIED MAIL to:

Thomas Karres
Manager, Environmental, Safety & Health
Cyanco
5505 Cyanco Drive
Winnemucca, NV 90058

CERTIFIED MAIL NUMBER: 7011 0470 0002 9197 7432

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

Michael Hingerty, 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

9/28/12
Date



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105

Certified Mail No.: 7011 0470 0002 9197 7432

Refer to: Cyanco, 5505 Cyanco Drive, Winnemucca, Nevada, CA

SEP 28 2012

Thomas Karres,
Manager, Environmental, Safety and Health
Cyanco
5505 Cyanco Drive
Winnemucca, Nevada 90058

Re: Consent Agreement and Final Order, Settlement of CERCLA and EPCRA Violations

Dear Mr. Karres:

Please find enclosed the fully executed Consent Agreement and Final Order (CA/FO) negotiated between the United States Environmental Protection Agency, Region IX (EPA), and Cyanco concerning the facility located at 5505 Cyanco Drive, Winnemucca, Nevada.

This CA/FO simultaneously commences and concludes the above-referenced proceeding concerning the outstanding Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and Emergency Planning and Community Right-to-Know Act (EPCRA) compliance matters between Cyanco and EPA as alleged in the CA/FO.

If you have any questions regarding the CERCLA and EPCRA requirements governing operations at Cyanco, or which concern the proceedings terminated by the enclosed documents, please contact Marie Rongone at (415) 972-3891.

Sincerely,

Jane Diamond
for

Jane Diamond
Director
Superfund Division