



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 07 2017

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Scott H. Reisch, Esq.
Hogan Lovells US LLP
1601 Wewatta Street, Suite 900
Denver, Colorado 80202

Re: Alltech, Inc.
Consent Agreement and Final Order
Docket No. EPCRA-04-2016-2033(b)

Dear Mr. Reisch:

Enclosed is a copy of the ratified Consent Agreement and Final Order (CAFO) in the above-referenced matter. The original CAFO has been filed with the Regional Hearing Clerk and served on the parties as directed in Section 22.6 of the Consolidated Rules of Practice, 40 C.F.R. Part 22.

To ensure proper processing, the Respondent's Name and Docket Number for this case, identified above and in the CAFO, should be noted on any cashier's or certified check submitted in payment of the penalty.

Also, enclosed is a copy of a document entitled "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Securities and Exchange Commission any environmental enforcement actions taken by the U. S. Environmental Protection Agency Region 4. Where used in the document, "SEC" refers to the Securities and Exchange Commission.

Should you or your client have any questions concerning this matter or Alltech, Inc.'s compliance status in the future, please contact Michiko Kono, Associate Regional Counsel, at (404) 562-9558.

Sincerely,

A handwritten signature in black ink, appearing to read "AToney", with a long horizontal flourish extending to the right.

Anthony G. Toney

Chief

Chemical Safety and Enforcement Branch

Enclosures

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 4

IN THE MATTER OF:

Alltech, Inc.

Respondent.

)
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) Docket Number: EPCRA-04-2016-2033(b)
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HEARING CLERK

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CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 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 pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency, EPA. Respondent is Alltech, Inc.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 and Section 325 of EPCRA, 42 U.S.C. § 11045, is vested in the Administrator of the EPA. The Administrator of the EPA has delegated this authority under CERCLA and under EPCRA to the Regional Administrators by EPA Delegations 14-31 and 22-3-A, both dated May 11, 1994. The Regional Administrator, EPA Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004, and the authority under EPCRA by EPA Region 4 Delegation 22-3-A, dated November 8, 1994. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent, Alltech, Inc., is a corporation doing business in the Commonwealth of Kentucky.

5. Respondent is a "person" and is the "owner or operator" of a "facility" as those terms are defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7) and Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 101 (20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A), and Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), respectively.

6. Respondent's facility is located at 3031 Catnip Hill Pike, Nicholasville, Kentucky 40356.

III. EPA's Allegations of Violations

Violation of Section 103(a) of CERCLA

7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of the EPA to publish 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 to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). The EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the RQ.

9. Respondent was in charge of the facility during the relevant period described below.

10. Ammonium hydroxide (aqueous ammonia) is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 1,000 pounds, as specified in 40 C.F.R. § 302.4.

11. On June 12, 2015, a release of aqueous ammonia above the RQ occurred at the facility.

12. The EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the applicable CERCLA regulations, 40 C.F.R. § 302.6, by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of aqueous ammonia in an amount equal to or greater than its RQ at Respondent's facility and is therefore subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

13. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, the EPA may assess a penalty not to exceed **\$37,500** for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after December 6, 2013. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

Violations of Section 304(a) EPCRA

14. Section 304(a) of EPCRA, 42 U.S.C. §11004(a) and the regulations found at 40 C.F.R. § 355, Subpart C, require the owner or operator of a facility at which a hazardous chemical is produced, used or stored, to immediately provide notice to the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), when there has been a release of an EPCRA extremely hazardous substance, or a CERCLA hazardous substance in an amount equal to or greater than the RQ from a facility. Section 304(a) does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

15. Respondent was the owner or operator of the facility during the relevant period described herein.

16. At all times relevant to this matter, the facility produced, used, or stored a “hazardous chemical” as defined under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and under 29 C.F.R. § 1910.1200(c).

17. Aqueous ammonia is a hazardous substance with a CERCLA RQ of 1,000 pounds as established under Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), and as specified in 40 C.F.R. § 302.4.

18. On June 12, 2015, a release of aqueous ammonia above the RQ occurred at the facility. The EPA alleges that the release resulted in the potential for exposure to persons beyond the site or sites on which the facility is located.

19. The EPA alleges that Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. §11004(a), and the applicable EPCRA regulations of 40 C.F.R. § 355, Subpart C, by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of aqueous ammonia in an amount equal to or greater than the RQ at Respondent’s facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. §11045.

20. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R. Part 19, EPA may assess a penalty of not more than **\$37,500** for each violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) that occurred after December 6, 2013. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

Violations of Section 304(c) of EPCRA

21. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c) and the regulations found at 40 C.F.R. Part 355, Subpart C, require the owner or operator of a facility at which a hazardous chemical is produced, used or stored, to provide a written follow-up emergency notice to the SERC and LEPC when there has been a release of an EPCRA extremely hazardous substance, or a CERCLA hazardous substance in an amount equal to or greater than the RQ from a facility. Section 304(c) does not apply to any release which results in exposure to persons solely within the site or sites on which a facility is located.

22. Respondent was the owner or operator of the facility during the relevant period described herein.

23. At all times relevant to this matter, the facility produced, used, or stored a "hazardous chemical" as defined under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and under 29 C.F.R. § 1910.1200(c).

24. Aqueous ammonia is a hazardous substance with a CERCLA RQ of 1,000 pounds as established under Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), and as specified in 40 C.F.R. § 302.4.

25. On June 12, 2015, a release of aqueous ammonia above the RQ occurred at the facility. EPA alleges that the release resulted in the potential for exposure to persons beyond the site or sites on which the facility is located.

26. Respondent violated the notification requirements of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), by failing to provide a written follow-up emergency notice to the SERC and LEPC when there had been a release of aqueous ammonia in an amount equal to or greater than the RQ at the facility, and is therefore subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

27. Pursuant to Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), and 40 C.F.R. Part 19, the EPA may assess a penalty of not more than \$37,500 for each violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), that occurred after December 6, 2013. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

IV. Consent Agreement

28. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

29. Respondent waives any right to contest the allegations and its right to appeal the proposed final order accompanying the Consent Agreement.

30. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

31. Except with respect to the actions and omissions alleged in section III above, Respondent certifies that as of the date of its execution of this CAFO, Respondent is in compliance with all relevant provisions of section 103(a) of CERCLA and sections 304(a) and (c) of EPCRA at the facility described in paragraph 6 of this CAFO.

32. Compliance with this CAFO shall resolve the allegations of violations contained herein. In accordance with 40 C.F.R. § 22.18(c), compliance with this CAFO only resolves Respondent's liability for federal civil penalties for the allegations in Section III of this CAFO and does not affect the right of the EPA or U.S. to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law. This CAFO does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of EPCRA, CERCLA or other applicable laws and regulations.

33. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA and EPCRA.

V. Final Order

34. Respondent shall pay a civil penalty of **FIVE THOUSAND, SEVEN HUNDRED SIXTY-THREE DOLLARS (\$5,763)** for the CERCLA violation in Section III, which shall be paid within thirty (30) days of the effective date of this CAFO.

35. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

BY MAIL

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, Missouri 63197-9000

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979076
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1819

BY ELECTRONIC TRANSFER*
Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street

New York, New York 10045
Beneficiary: US Environmental Protection Agency

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the U. S. EPA.

The check shall reference on its face the name and the Docket Number of the CAFO.

36. Respondent shall pay a civil penalty of **ELEVEN THOUSAND, FIVE HUNDRED TWENTY-SEVEN DOLLARS (\$11,527)** for the EPCRA violations in Section III, which shall be paid within thirty (30) days of the effective date of this CAFO.

37. Respondent shall pay the EPCRA penalty by forwarding a cashier's or certified check payable to "Treasurer, United States of America," to one of the following addresses:

BY MAIL

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, Missouri 63197-9000

BY OVERNIGHT

U.S. Environmental Protection Agency
Government Lockbox 979077
1005 Convention Plaza
SL-MO-C2-GL
St. Louis, Missouri 63101
(314) 425-1819

BY ELECTRONIC TRANSFER*

Federal Reserve Bank of New York
ABA: 021030004
Account Number: 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045

Beneficiary: US Environmental Protection Agency

*Note: Foreign banks **must** use a United States Bank to send a wire transfer to the U. S. EPA.

The check shall reference on its face the name and the Docket Number of the CAFO.

38. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk
U.S. EPA Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Vinson Poole
U.S.EPA Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Saundi Wilson
U.S. EPA Region 4
Office of Regional Counsel
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

39. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

40. Pursuant to 31 U.S.C. § 3717, the EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

41. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

42. This CAFO shall be binding upon the Respondent, its successors, and assigns.

43. The following individual is authorized to receive service for the EPA in this proceeding:

Robert W. Bookman
U.S. EPA Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street, S.W.
Atlanta, Georgia 30303
(404) 562-9169

44. Each undersigned representative of the parties to this CAFO certifies that he or

she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

VI. Effective Date

45. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

Alltech, Inc.

By: E. Michael Castle (Signed) Date: 4 JAN 17

Name: E. Michael Castle (Typed or Printed)

Title: Vice President and Secretary (Typed or Printed)

U.S. Environmental Protection Agency

By: Beverly H. Banister (Signed) Date: 2/21/17

Beverly H. Banister
Director
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 6th day of March, 2017

Tanya Floyd
Tanya Floyd
Regional Judicial Officer

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing

Consent Agreement and Final Order: In the Matter of Alltech, Inc., Docket Number: EPCRA-

04-2016-2033(b), on the parties listed below in the manner indicated:

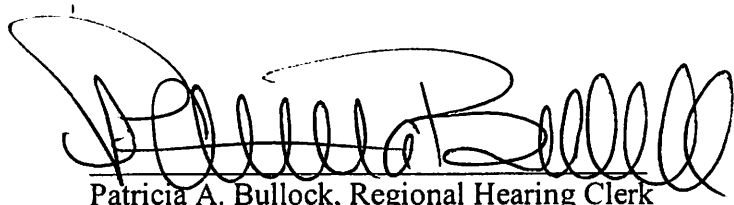
Robert W. Bookman (Via EPA's internal mail)
U.S. EPA Region 4
Chemical Management and Emergency Planning Section
61 Forsyth Street
Atlanta, GA 30303

Michiko Kono (Via EPA's internal mail)
U.S. EPA Region 4
Office of Regional Counsel
61 Forsyth Street
Atlanta, GA 30303

Robert Caplan (Via EPA's internal mail)
U.S. EPA Region 4
Office of Regional Counsel
61 Forsyth Street
Atlanta, GA 30303

Scott H. Reisch, Esq. (Via Certified Mail - Return Receipt Requested)
Hogan Lovells US LLP
1601 Wewatta Street, Suite 900
Denver, Colorado 80202

Date: 3-7-17



Patricia A. Bullock, Regional Hearing Clerk
United States Environmental
Protection Agency Region 4
Atlanta Federal Center
61 Forsyth Street, S.W.
Atlanta, GA 30303
(404) 562-9511