



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

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

SEP 03 2009

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

Mr. Steven I. Addlestone  
Senior Attorney  
Eastman Chemical Company  
100 Eastman Road  
Kingsport, Tennessee 37662

SUBJECT: Eastman Chemical Company, Kingsport, Tennessee  
Consent Agreement and Final Order  
EPCRA-04-2009-2038((b))

Dear Mr. Addlestone:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) matter (Docket No. EPCRA-04-2009-2038(b)) involving Eastman Chemical Company, Kingsport, Tennessee. The CAFO was filed with the Regional Hearing Clerk, as required by 40 CFR Part 22 and became effective on the date of the filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts you on notice of your potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the Environmental Protection Agency (EPA). If you have any questions with regards to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC Notice.

If you have any questions, please call Mr. Lawrence Fincher at (404) 562-9190.

Sincerely,

A handwritten signature in black ink that reads "Caron B. Falconer".

Caron B. Falconer  
Chief, EPCRA Enforcement Section

Enclosures

Internet Address (URL) • <http://www.epa.gov>

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4

IN THE MATTER OF: )  
 )  
 Eastman Chemical Company )  
 )  
 Respondent. )  
\_\_\_\_\_ )

Docket Number: EPCRA-04-2009-2038(b)

RECEIVED  
HEARINGS DIVISION

2009 SEP -3 PM 2:49

RECEIVED  
EPCRA DIVISION

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 Eastman Chemical Company.

2. 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

3. 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 EPA. The Administrator of 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, 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.

4. Respondent is a corporation doing business in the State of Tennessee.

5. Respondent is a "person" as 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).
6. Respondent has a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9) and by Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).
7. Respondent's facility is located at 100 Eastman Road, Kingsport, Tennessee.
8. Respondent is an "owner or operator" of the facility as that term is defined by Section 101 (20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).
9. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of 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). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended. The list is codified at 40 C.F.R. Part 302.
10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. Part 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 reportable quantity (RQ).
11. Respondent was in charge of the facility during the relevant period described below.
12. M-xylene 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.
13. On September 29, 2008, Respondent had a release of m-xylene above the RQ at the facility.
14. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of m-xylene 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.
15. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$32,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred on or after March 15, 2004, but prior to

January 12, 2009. 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.

16. Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) and the regulations found at 40 C.F.R. § 355.40, require the owner or operator of a facility at which hazardous chemicals are produced, used or stored, to immediately notify the State Emergency Response Commission (SERC) and Local Emergency Planning Committee (LEPC) when there has been a release of a CERCLA hazardous substance or extremely hazardous substance in an amount equal to or greater than the reportable quantity.

17. Respondent was the owner or operator of the facility during the relevant period, described below.

18. 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).

19. M-xylene a "hazardous substance" for which the Administrator has promulgated an RQ under Section 102 of CERCLA, 42 U.S.C. § 9602. M-xylene has an RQ of 1,000 pounds, as specified in 40 C.F.R. Part 302.

20. On September 29, 2008, Respondent had a release of m-xylene above the RQ at the facility.

21. EPA alleges that Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) by failing to immediately notify the SERC and LEPC as soon as Respondent had knowledge of the release of m-xylene 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.

22. 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 \$32,500 for each violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a) that occurred on or after March 15, 2004. Civil penalties under Section 325(b) of EPCRA, 42 U.S.C. § 11045(b), may be assessed by Administrative Order.

### III. Consent Agreement

23. 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.

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

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

26. Respondent agrees to complete the Supplemental Environmental Project (SEP) set forth in this CAFO.

27. Respondent certifies that as of the date of its execution of this CAFO, its Tennessee facility is to the best of its knowledge in compliance with all relevant requirements of EPCRA and CERCLA.

28. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Neither EPA nor Complainant waives any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

29. 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.

#### IV. Final Order

30. Respondent shall pay a civil penalty of ONE THOUSAND THREE HUNDRED TEN DOLLARS (\$1,310) for the CERCLA violation which shall be paid within thirty (30) days of the effective date of this CAFO.

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

BY MAIL	BY OVERNIGHT
U.S. Environmental Protection Agency	U.S. Bank
Superfund Payments	Attention: Natalie Pearson (314) 418-4087
Cincinnati Finance Center	1005 Convention Plaza
P.O. Box 979076	Mail Station SL-MO-C2GL
St. Louis, Missouri 63197-9000	St. Louis, Missouri 63101

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

32. Respondent shall pay a civil penalty of TWO THOUSAND SIX HUNDRED TWENTY ONE DOLLARS (\$2,621) for the EPCRA violation which shall be paid within thirty (30) days of the effective date of this CAFO

~~FOUR THOUSAND THREE HUNDRED DOLLARS (\$4,743) for the purchase and donation of the following~~  
equipment to the City of Kingsport Fire Department:

3 each HM-VPGI	Midmatic nozzles w grip 1.5 NH
2 each H-2BLITZ	Handline playpipe/nozzle 2.5 NH
1 each FJ-LX-HM	Foamjet LX midrange
1 each UE-095-NJ-NF	Inline eductor 2.5 to 1.5 NH

1 each AC5ANJ-NJ	2.5 hydrant gate valve NH
2 each FS-3STACK	NFPA Stacked tips 1.5 inlet
2 each H-2VPP	Playpipe w/valve 2.5NH to 1.5NH
2 each AYNJ-NF	Gated wye,2.5 NH to 1.5 NH outlets
1 each A3810	Jumbo spanner set w/bracket
2 each A3800	Aj. Hydrant wrenches
1 each A3820	Hose roller
1 each S-CN	Cellar nozzle 2.5 NH
1 each A01ST	5" storz blind cap
1 each AH3HST-NR elbow	5" storz to 4.5 female swivel handle NH
1 each AB3ST-NX	Ball valve intake, w/elbow PRV
1 each H-VITG	Valve integral tip nozzle, w/grip orange 1.5 NH
1 each HM-TO	Midmatic tip 100 psi, 1.5 NH
1 each EB16	Tempest Electric PPV fan
1 each 35R25FNST25FNST	Double FM swivel adapter
1 each 36R25MNST25MNST	Double male adapter
1 each S54525	Kochek 5" Storzx2.5 FNST adapter
1 each 37R25FNST15MNST	2.5 to 1.5 MNST adapter
1 each PPB-36 Akron 36"	Pinch point pry bar w/brackets
3 each 980005022	Seat belt cutter
1 each RB44010 PM1	Rope bag black, small

36. No later than thirty (30) calendar days after the completion of the project, Respondent shall submit to EPA a SEP Completion Report. The Report shall be sent to the EPCRA Enforcement Section, to the attention of Lawrence Fincher at the address provided above. The Report shall include the following:

- (a) an affidavit from an authorized company official, attesting that the SEP has been completed or explaining in detail any failure to complete it; and
- (b) copies of appropriate documentation, including invoices and receipts, showing a total expenditure of FOURTEEN THOUSAND SEVEN HUNDRED FORTY THREE DOLLARS (\$14,743), or greater, was spent on the purchase of the equipment described in paragraph 35.

Upon request, Respondent shall send EPA any additional documentation requested by EPA.

37. For Federal Income Tax purposes, Eastman Chemical Company agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

38. Respondent certifies that, as of the date this CAFO is signed, it is not required to perform any part of the SEP by any federal, state or local law, regulation, permit or order, or by any agreement or grant. Respondent further certifies that, as of this date, it has not received and

is not negotiating to receive, credit for any part of the SEP in any other enforcement action of any kind.

39. Any public statement, oral or written, by Respondent making any reference to the SEP shall include the following language:

"This project was undertaken in connection with the settlement of an enforcement action taken by the U.S. Environmental Protection Agency for violations of Section 304 of the Emergency Planning and Community Right-to-Know Act of 1986 and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act".

40. If Respondent fails to timely and fully complete any part of the SEP, including failure to spend the minimum amount of FOURTEEN THOUSAND SEVEN HUNDRED FORTY THREE DOLLARS (\$14,743), Respondent shall pay to the United States a stipulated penalty of the difference between \$14,743 and the amount spent except as follows:

(a) if the SEP was fully and timely completed, and Respondent expended at least 90 percent of the minimum amount required, Respondent shall not pay a stipulated penalty;

or

(b) if the SEP was not fully and timely completed, but Respondent expended at least 90 percent of the minimum amount required, Respondent shall not pay a stipulated penalty if the Respondent has made a good faith effort to fully and timely complete the SEP.

For purposes of this paragraph, whether Respondent has fully and timely completed the SEP and whether Respondent made a good faith effort to do so shall be in the sole discretion of EPA.

41. If Respondent fails to timely submit a SEP Completion Report as required by this CAFO, Respondent shall pay to the United States a stipulated penalty of \$100 for each calendar day that the report is late.

42. Respondent shall pay any stipulated penalties that accrue under this CAFO within 15 calendar days of the receipt by Respondent of written demand from EPA for such penalties. Such penalties shall be paid in accordance with the procedures set forth above for the payment of the civil penalty.

43. Pursuant to 31 U.S.C. § 3717, 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 date of entry of the 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.

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

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

46. The following individual represents EPA in this matter and is authorized to receive service for EPA in this proceeding:

Caron B. Falconer  
U.S. EPA, Region 4  
Air, Pesticides & Toxics Management Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-8451

47. 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.

**THIS SECTION INTENTIONALLY LEFT BLANK**



V. Effective Date

48. 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:

Eastman Chemical Company

By: J. Parker Smith (Signature) Date: 8-18-2009

Name: J. Parker Smith (Typed or Printed)

Title: Vice President and General Manager Worldwide Manufacturing Support and Quality (Typed or Printed)

U.S. Environmental Protection Agency

By: Carol L. Kemker Date: 7/27/09

Carol L. Kemker, Acting Director  
Air, Pesticides & Toxics  
Management Division  
Region 4

APPROVED AND SO ORDERED this 3<sup>rd</sup> day of Sept., 2009.

Susan B. Schub  
Susan B. Schub  
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 Eastman Chemical Company, Docket No. EPCRA 04-2009-2038(b), on the parties listed below in the manner indicated:

Caron B. Falconer (Via EPA's internal mail)  
U.S. EPA, Region 4  
Air, Pesticides and Toxics Management  
61 Forsyth Street  
Atlanta, GA 30303

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

Mr. Steven L. Addlestone (Certified Mail - Return Receipt Requested)  
Senior Counsel  
P.O. Box 511  
100 Eastman Road  
Kingsport, Tennessee 37662

Date: 9-3-09

  
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

**EPA ACCOUNTS RECEIVABLE CONTROL NUMBER FORM**

**TO BE COMPLETED BY THE ORIGINATING OFFICE:**

(Attach a copy of the final order and transmittal letter to Defendant/Respondent)

This form was originated by: Saundi Wilson on 8/31/09  
(Name) (Date)

in the Region 4, ORC, OEA at (404) 562-9504  
(Office) (Telephone Number)

Non-SF Judicial Order/Consent Decree  
USAO COLLECTS

Administrative Order/Consent Agreement  
FMO COLLECTS PAYMENT

SF Judicial Order/Consent Decree  
DOJ COLLECTS

Oversight Billing - Cost Package required:  
Sent with bill

Not sent with bill

Other Receivable

Oversight Billing - Cost Package not required

This is an original debt

This is a modification

PAYEE: Eastman Chemical Company  
(Name of person and/or Company/Municipality making the payment)

The Total Dollar Amount of the Receivable: \$ 1,310=CERCLA / 2,621=EPCRA  
(If installments, attach schedule of amounts and respective due dates. See Other side of this form.)

The Case Docket Number: EPCRA 04 2009 2038(b)

The Site Specific Superfund Account Number: \_\_\_\_\_

The Designated Regional/Headquarters Program Office: \_\_\_\_\_

The IFMS Accounts Receivable Control Number is: \_\_\_\_\_ Date \_\_\_\_\_

If you have any questions, please call: \_\_\_\_\_ of the Financial Management Section at: \_\_\_\_\_

**DISTRIBUTION:**

**A. JUDICIAL ORDERS:** Copies of this form with an attached copy of the front page of the FINAL JUDICIAL ORDER should be mailed to:

- |                                                                                                                                                                      |                              |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------|
| 1. Debt Tracking Officer<br>Environmental Enforcement Section<br>Department of Justice RM 1647<br>P.O. Box 7611, Benjamin Franklin Station<br>Washington, D.C. 20044 | 2. Originating Office (EAD)  |
|                                                                                                                                                                      | 3. Designated Program Office |

**B. ADMINISTRATIVE ORDERS:** Copies of this form with an attached copy of the front page of the Administrative Order should be to:

- |                           |                              |
|---------------------------|------------------------------|
| 1. Originating Office     | 3. Designated Program Office |
| 2. Regional Hearing Clerk | 4. Regional Counsel (EAD)    |