



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION IV

345 COURTLAND STREET, N.E.  
ATLANTA, GEORGIA 30365

SEP 21 1994

4APT-T3

SEP 15 1994

Stephen P. Krchma, Esq.  
Environmental Counsel  
Monsanto Company  
800 N. Lindbergh Boulevard  
St. Louis, Missouri 63167

Re: Complaint and Consent Agreement and Consent Order  
Docket No. IV-93-529

Dear Mr. Krchma:

Enclosed please find a copy of the Complaint and Notice of Opportunity for Hearing issued to your company for violations of Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. §11045 and the Emergency Planning and Community Right-to-Know Act (EPCRA) 42 U.S.C. §11001 et seq. The original and one copy of the Complaint and Notice of Opportunity for Hearing are being filed with the Regional Hearing Clerk as directed by the Consolidated Rules of Practice at 40 C.F.R. §22.05(a).

Since this matter has been the subject of settlement discussions, you will also find enclosed a Consent Agreement and Consent Order (CACO) for signature by the appropriate representative of the Monsanto Company. After the CACO has been signed and returned, EPA's representative will sign it and submit it to the Regional Administrator for approval. To ensure that we obtain that approval in a timely manner, please return the signed CACO within ten (10) days of your receipt of this letter.

If you have any questions, please contact Walter Weeks  
(404) 347-3555, Extension 6936.

Sincerely yours,

*William J. Taylor*  
William J. Taylor

Chief  
Title III & Toxics Section

Enclosure

cc: Mr. Jack F. Mayausky  
Plant Manager, Anniston, AL

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION IV

|                   |   |                            |
|-------------------|---|----------------------------|
| IN THE MATTER OF: | ) | Docket No. EPCRA-IV-93-529 |
|                   | ) |                            |
| Monsanto Chemical | ) | COMPLAINT                  |
| Company, Inc.     | ) | and                        |
|                   | ) | NOTICE OF                  |
| Respondent.       | ) | OPPORTUNITY FOR HEARING    |

COMPLAINT

This Complaint is issued under the authority vested in the Administrator of the United States Environmental Protection Agency (EPA) by Section 325 of the Emergency Planning and Community Right-To-Know Act (EPCRA), 42 U.S.C. §11045 and Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. §9609. The Administrator of EPA has delegated this authority under EPCRA and CERCLA to the Regional Administrators by EPA delegations 22-13 and 14-31 respectively, both dated September 13, 1987. The Regional Administrator, Region IV, redelegated the EPCRA authority to the Director, Air, Pesticides and Toxics Management Division, U.S. EPA, Region IV, on December 13, 1988, and redelegated the CERCLA authority to the Director, Air, Pesticides and Toxics Management Division, U.S. EPA, Region IV, on August 20, 1992. The Director, Air, Pesticides and Toxics Management Division (Complainant), issues this Complaint and Notice of Opportunity to Request a Hearing against Monsanto Chemical Company, Inc. (Respondent), for violations of (Section 304 of EPCRA, 42 U.S.C. §11004), and a violation of (Section 103 of CERCLA, 42 U.S.C. §9603), and alleges the following:

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PRELIMINARY STATEMENT

1. Respondent is a corporation doing business in the State of Alabama.

2. Respondent is a "person" as that term is defined by Section 329(7) of EPCRA, 42 U.S.C. §11049(7) and by Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

3. At all times relevant to this Complaint, Respondent owned and operated a facility located at 300 Birmingham Highway, Anniston, Alabama.

4. Respondent's facility is a "facility" as that term is defined by Section 329(4) of EPCRA, 42 U.S.C. §11049(4) and by Section 101(9) of CERCLA, 42 U.S.C. §9601(9).

COUNT I

5. The preceding allegations are realleged as though fully set forth below and are incorporated herein by reference.

6. 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, initially published on April 4,

1985 (50 Federal Register 13474) and with later amendments, is codified at 40 C.F.R. Part 302.

7. Section 103(a) of CERCLA, 42 U.S.C. §9603(a), requires 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.

8. Benzene (CAS No. 71-43-214) is a hazardous substance as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. §9602(14), with an RQ of 10 pounds specified in 40 C.F.R. §302.4.

9. On March 20, 1992, at or about 2:00 am, a release of benzene occurred from Respondent's facility in the amount of 220 pounds.

10. Respondent had knowledge that the March 20, 1992, release of benzene had exceeded the RQ no later than 3:00 am on March 20, 1992.

11. Respondent notified the NRC of said release by telephone at or about 2:00 pm, on March 20, 1992.

12. 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 benzene in an amount equal to or greater than the RQ from its facility.

COUNT II

13. The preceding allegations are realleged as though fully set forth below and are incorporated herein by reference.

14. Section 304(a) of EPCRA, 42 U.S.C. §11004(a) provides that if a release of an extremely hazardous substance occurs from a facility at which a hazardous chemical is produced, used, or stored, and such release requires a notification under CERCLA §103(a), the owner or operator of the facility shall immediately provide notice to the local emergency planning commission (LEPC), if established, and the State Emergency Response Commission (SERC).

15. On March 20, 1992, at or about 2:00 am, a release of benzene occurred from Respondent's facility in the amount of 220 pounds.

16. Respondent notified the SERC of said release of benzene on March 20, 1992, at or about 2:00 pm.

17. Respondent had knowledge that the March 20, 1992, release of benzene had exceeded the RQ no later than 3:00 am on March 20, 1992.

18. Respondent violated the notification requirements of Section 304(a) of EPCRA, 42 U.S.C. §11004(a) by failing to immediately notify the SERC of a release of benzene in an amount greater than or equal to the RQ from its facility as soon as Respondent had knowledge of said release.

COUNT III

19. The preceding allegations are realleged as though fully set forth below and are incorporated herein by reference.

20. As soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. §11004(a), an owner or operator of a facility shall provide a written follow-up emergency notice to the SERC, pursuant to Section 304(c) of EPCRA, 42 U.S.C. §11004(c).

21. On March 20, 1992, a release of benzene occurred from Respondent's facility in a quantity greater than the RQ.

22. Respondent did not provide a written follow-up emergency notice to the SERC indicating that the March 20, 1992 release had occurred.

23. Respondent violated the notification requirements of Section 304(c) of EPCRA, 42 U.S.C. §11004(a), by failing to provide a written follow-up emergency notice to the SERC as soon as practicable after the March 20, 1992 benzene release.

COUNT IV

24. The preceding allegations are realleged as though fully set forth below and are incorporated herein by reference.

25. On December 24, 1992, at least one release of benzene occurred from Respondent's facility in a quantity greater than the RQ.

26. Respondent did not provide a written follow-up emergency notice to the SERC indicating that the December 24, 1992 release had occurred.

27. Respondent violated the notification requirements of Section 304(c) of EPCRA, 42 U.S.C. §11004(a), by failing to provide written follow-up emergency notice to the SERC as soon as practicable after the December 24, 1992 benzene release.

COUNT V

28. The preceding allegations are realleged as though fully set forth below and are incorporated herein by reference.

29. As soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. §11004(a), an owner or operator of a facility shall provide a written follow-up emergency notice to the LEPC, pursuant to Section 304(c) of EPCRA, 42 U.S.C. §11004(c).

30. On March 20, 1992, a release of benzene occurred from Respondent's facility in a quantity greater than the RQ.

31. Respondent did not provide a written follow-up emergency notice to the LEPC indicating that the March 20, 1992 release had occurred.

32. Respondent violated the notification requirements of Section 304(c) of EPCRA, 42 U.S.C. §11004(a), by failing to provide a written follow-up emergency notice to the LEPC as soon as practicable after the March 20, 1992 benzene release.

COUNT VI

33. The preceding allegations are realleged as though fully set forth below and are incorporated herein by reference.

34. On December 24, 1992, at least one release of benzene occurred from Respondent's facility in a quantity greater than

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the RQ.

35. Respondent did not provide a written follow-up emergency notice to the LEPC indicating that the December 24, 1992 release had occurred.

36. Respondent violated the notification requirements of Section 304(c) of EPCRA, 42 U.S.C. §11004(a), by failing to provide written follow-up emergency notice to the LEPC as soon as practicable after the December 24, 1992 benzene release.

#### PROPOSED PENALTY

Section 109 of CERCLA, 42 U.S.C. §9609, provides that for violations of Section 103, 42 U.S.C. §9603, EPA may assess a penalty for the second or subsequent violations not to exceed \$75,000 per day that the violation continues.

Section 325(b)(2) of EPCRA, 42 U.S.C. §11045(b)(2) provides that for violations of Section 304, 42 U.S.C. §11004, EPA may assess a penalty for the second or subsequent violations not to exceed \$75,000 per day that the violation continues.

EPA records, Docket Number 91-02-E of April 4, 1990, show that the Monsanto Chemical Company paid a penalty for a Section 103(a) CERCLA violation and therefore is subject to the assessment of penalties for a second or subsequent violation.

Civil penalties under Section 109 of CERCLA, 42 U.S.C. §9609, and civil penalties under Sections 325(b)(2) of EPCRA, 42 U.S.C. §11045(b)(2), may be assessed by Administrative Order. On the basis of the violations of CERCLA and EPCRA described above, Complainant alleges that Respondent is subject to the assessment

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of penalties for violations of CERCLA Section 103 and EPCRA Section 304. Accordingly, Complainant proposes a penalty pursuant to the authority of Section 109 of CERCLA, 42 U.S.C. §9609, and Section 325 of EPCRA, 42 U.S.C. §11045, as set forth below:

|                                      |                                             | Based on<br>2nd offense                                                      | Agreed<br>1st offense | Settlement                   |
|--------------------------------------|---------------------------------------------|------------------------------------------------------------------------------|-----------------------|------------------------------|
| Count I                              | 42 U.S.C. §9603<br>CERCLA Section 103(a)    | \$ 75,000                                                                    | 8250                  | 1,650<br>to Reg.<br>superior |
| Count II                             | 42 U.S.C. §11004(a)<br>EPCRA Section 304(a) | 375K {<br>\$ 75,000<br>\$ 75,000<br>\$ 75,000<br>\$ 75,000<br>\$ 75,000<br>} | 74,750                | 14,950<br>to Reg.<br>general |
| Count III                            | 42 U.S.C. §11004(c)<br>EPCRA Section 304(c) |                                                                              |                       |                              |
| Count IV                             | 42 U.S.C. §11004(a)<br>EPCRA Section 304(a) |                                                                              |                       |                              |
| Count V                              | 42 U.S.C. §11004(c)<br>EPCRA Section 304(c) |                                                                              |                       |                              |
| Count VI                             | 42 U.S.C. §11004(c)<br>EPCRA Section 304(c) |                                                                              |                       |                              |
| Total Proposed Penalty.....          |                                             | \$450,000                                                                    | 83,000                | \$16,600                     |
| Supplemental Envir. Project required |                                             |                                                                              |                       | 132,000 *                    |
|                                      |                                             |                                                                              |                       | \$149,400                    |

In calculating the CERCLA and EPCRA penalties, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to the Respondent, its ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and such other matters as justice requires.

#### NOTICE OF OPPORTUNITY TO REQUEST A HEARING

Respondent may request, within 20 days of service of this complaint, a hearing before an EPA Administrative Law Judge on the Complaint and at the hearing may contest any material fact and the appropriateness of any penalty amount. To request a

\* Actually  

$$\begin{array}{r} 60 \\ 275 \\ \hline 335,000 \end{array}$$
 SEP 1st!  

$$\begin{array}{r} 16,600 \\ \hline 351,600 \end{array}$$
 - Actually committed

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hearing, Respondent must file a written Answer within twenty (20) calendar days of receipt of this Complaint. The Answer shall clearly and directly admit, deny or explain each of the factual allegations contained in this Complaint of which Respondent has any knowledge. Where Respondent has no knowledge of a particular factual allegation, the Answer shall so state. Such a statement is deemed to be a denial of the allegation. The Answer shall contain: (1) a statement of the facts which constitute the grounds of a defense; (2) a concise statement of the facts which Respondent intends to place at issue in the hearing; and (3) whether a hearing is requested. The denial of any material fact or the raising of any affirmative defense shall be construed as a request for a hearing. Failure of Respondent to admit, deny, or explain any material factual allegation contained in the Complaint constitutes an admission of the allegation.

If Respondent fails to file a written Answer within twenty (20) days of receipt of this Complaint, such failure shall constitute an admission of all facts alleged in the Complaint and a waiver of the right to a hearing. Failure to Answer within twenty (20) days may result in the filing of a Motion for Default and issuance of a Default Order. The Default Order may impose the penalties proposed herein without further proceedings.

Any hearing requested will be conducted in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and Revocation or Suspension of

Permits, 40 CFR Part 22. Respondent must send any request for a hearing to:

Regional Hearing Clerk  
U.S. EPA Region IV  
345 Courtland Street  
Atlanta, Georgia 30365

A copy of the Answer and all other documents that Respondent files in this action should be sent to the below named attorney representing U.S. EPA in this matter, as follows:

Lynda Crum  
Associate Regional Counsel  
U.S. EPA - Region IV  
345 Courtland Street  
Atlanta, Georgia 30365

If Respondent fails to request a hearing within the designated time period or fails to appear at a hearing, EPA may issue a Final Order assessing the proposed administrative penalty. In accordance with Section 325(f) of EPCRA, 42 U.S.C. §11045(f), Respondent may obtain review of any Final Order by filing a notice of appeal in the United States District Court for the district in which the facility is located within 30 days from the date of such Final Order and by simultaneously sending a copy of such notice by certified mail to the Administrator of EPA.

SETTLEMENT CONFERENCE

Whether or not Respondent requests a hearing, an informal conference may be requested in order to discuss the facts of this

case and to arrive at a settlement. To request an informal conference, please write to or telephone:

Lynda Crum  
Associate Regional Counsel  
U.S. EPA - Region IV  
345 Courtland Street  
Atlanta, Georgia 30365  
404/347-2335 x 2134

Please note that a request for, the scheduling of, or the participation in, an informal settlement conference does not extend the twenty (20) day period during which a written Answer and Request for Hearing must be filed as set forth above. The informal settlement conference procedure, however, may be pursued simultaneously with the hearing procedure.

SEPARATION OF FUNCTIONS AND EX PARTE COMMUNICATIONS

The Consolidated Rules prohibit any unilateral discussion or ex parte communication of the merits of a case with the Administrator, members of the Environmental Appeals Board, Regional Administrator, Regional Judicial Officer or the Administrative Law Judge after issuance of a complaint. From the date of this Complaint until the final Agency decision in this case, neither the Administrator, members of the Environmental Appeals Board, Administrative Law Judge, Regional Administrator nor the Regional Judicial Officer shall have any ex parte

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communication with the EPA trial staff or the Respondent on the merits of any issue involved in this proceeding.

9/14/94  
Date

Winston A. Smith  
Winston A. Smith, Director  
Air, Pesticides & Toxics  
Management Division

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CERTIFICATE OF SERVICE

I certify that on the date below I hand-delivered the original and one copy of the Administrative Complaint and Notice of Opportunity to Request a Hearing In the Matter of Monsanto Company, Inc., Docket No. EPCRA-IV-93-529, to the Regional Hearing Clerk at the following address:

Julia Mooney  
Regional Hearing Clerk  
U.S. EPA - Region IV  
345 Courtland Street, N.E.  
Atlanta, GA 30365

I also certify that, on the date below, I sent by certified mail, return receipt requested, a copy of the Administrative Complaint and Notice of Opportunity to Request a Hearing and a copy of the Consolidated Rules of Practice, 40 CFR Part 22, to the following address:

Mr. Stephen P. Krchma, Esq.  
Environmental Counsel  
Monsanto Company  
800 N. Lindbergh Boulevard  
St. Louis, Missouri 63167

9/14/96  
Date

Dorothy Jones  
Dorothy Jones  
Secretary

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