

UNITED STATES OF AMERICA  
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

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HILDA L. SOLIS, SECRETARY OF LABOR,	:	
UNITED STATES DEPARTMENT OF LABOR,	:	
Complainant,	:	OSHRC DOCKET
	:	No. 09-0333
v.	:	
	:	INSPECTION NO.
BAYER CROPSCIENCE LP,	:	311684252
and its successors,	:	
Respondent.	:	
and	:	
INTERNATIONAL ASSOCIATION OF MACHINISTS	:	
AND AEROSPACE WORKERS, District Lodge 34,	:	
Authorized Employee Representative.	:	

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SETTLEMENT AGREEMENT

Complainant, Secretary of Labor, United States Department of Labor, by her attorneys; Respondent, by its attorneys; and the International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 34, by its Representative, in order to conclude this matter without the necessity of further litigation, herein agree and stipulate as follows:

1. The Commission has jurisdiction of this matter pursuant to Section 10(c) of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 651, et seq. (hereinafter the "Act").

2. The parties agree that this Settlement Agreement amends the Citations and Notifications of Penalty issued on February 26, 2009 as follows:

(A) Citation No. 1

(a) Item No. 3 is amended as follows. The instance description is amended to

read:

(a) Methomyl Unit: Written Operating Procedures did not clearly require evacuation or shelter in place in certain conditions, such as when emergency shutdown procedures are triggered.

The penalty for Item No. 3 remains \$7,000.00.

(b) Item No. 5 is amended as follows. The instance description is amended to

read:

(a) Methomyl Unit: Written operating procedures for the Methomyl process did not adequately emphasize the importance and frequency of sampling the process stream in order to avoid or correct deviations from the operating limits for Methomyl concentration.

The penalty for Item No. 5 remains \$7,000.00.

(c) Item No. 6 is amended as follows. The instance description is amended to

read:

(a) Methomyl Unit: The employer did not adequately train employees operating the Methomyl process on the importance of following Standard Operating Procedures, including the consequences of deviating from Standard Operating Procedures during start-up and normal operating procedures, and on the importance and frequency of sampling the process stream to avoid potential hazards associated with Methomyl concentrations above critical operating parameters.

The penalty for Item No. 6 remains \$7,000.00.

(d) Item No. 7 is amended as follows. The instance description is amended to

read:

(a) Methomyl Unit: The employer did not provide refresher training frequently enough to assure that each employee operating the Methomyl process understood and adhered to the operating procedures for startup of the process and to assure that each employee understood the importance and frequency of sampling the process stream to avoid potential hazards associated with Methomyl concentration above the critical operating parameters.

(b) Methomyl Unit: The employer did not adequately consult with employees involved in operating the process to determine the appropriate frequency of refresher training.

The penalty for Item No. 7 remains \$7,000.00.

(e) Item No. 8a

Instance (a) remains as originally issued, with a penalty of \$7,000.00.

Instance (b) is reclassified as Other-than-Serious Citation No. 3, Item No. 1, and is amended as follows. The instance description is amended to read:

(a) Methomyl Unit: The employer did not update the written operating procedures to reflect the current manufacturer of the distributed control system (DCS) in the Methomyl control room.

This item is assessed a penalty of \$7,000.00.

(f) Item No. 8b

Instance (a) remains as issued, with a penalty of \$7,000.00.

Instances (b) through (h) are reclassified as Other than Serious Citation No. 3, Item No. 2, Instance (a), and is amended as follows. The instance description is amended to read:

(a) Methomyl Unit: The critical operating parameters for the following: the High Methomyl Reactor Temperature, High MIC Stripping Still Temperature, High Crystallizer Feed Tank, High Dryer Temperature, High Methomyl Concentration in the Residue Treater, High MIC Feed Tank Temperature, Pressure and Venting, and High Hydrogen Peroxide Tank Temperature, were not current and accurate in that one of the never exceed responses is to notify a shift supervisor. There have not been shift supervisors in the Methomyl Unit since 2005.

This item is assessed a penalty of \$7,000.00.

(g) Item No. 9 remains as issued, and the penalty is modified to \$7,000.00.

Respondent has abated this violation, and has provided abatement verification of same to OSHA.

(h) Item No. 10 is amended as follows. The instance description is amended to read:

(a) Methomyl Unit: Employees were not provided and required to wear flame retardant clothing in locations and in circumstances where there is a potential for a flash fire.

The penalty for Item No. 10 remains \$7,000.00.

As abatement, Respondent agrees to retain a qualified independent consultant to conduct a study regarding the need for the use of flame retardant clothing by employees. The study will examine the need for employees to use flame retardant clothing on a task-specific basis. The study will be completed within six months of the Review Commission's Final Order date in this case. Within nine months of the Review Commission's Final Order date, Respondent will implement for all of its employees at the Institute Site those recommendations of the consultant that Respondent accepts as feasible. For any recommendations that Respondent will not implement, Respondent will provide OSHA with information as to why the recommendation is not being implemented. Respondent will provide written confirmation of abatement within ten calendar days of the abatement date, as required by 29 C.F.R. §1903.19.

(i) Item No. 11b is amended as follows. The instance description is amended to read:

(a) Methomyl Unit: The written Initial Break Procedures did not clearly require the use of air sampling equipment on all initial breaks into equipment that may have contained MIC.

The penalty for Item No. 11b remains \$7,000.00.

As abatement, within three months of the Review Commission's Final Order date in this matter, Respondent will revise all written Initial Break Procedures for the Institute Plant to clearly require the use of air sampling equipment on all initial breaks into equipment that may have contained MIC, and will inform affected employees about the revision. Respondent will provide written confirmation of abatement within ten calendar days of the abatement date, as required by 29 C.F.R. §1903.19.

(j) Item Nos. 1, 2, 4, and 11(a) are vacated.

(B) Citation No. 2

(a) Item No. 1 is reclassified as Serious Citation No. 1, Item No. 12, and is amended as follows. The instance description is amended to read:

(a) 29 CFR 1910.119(e)(3)(v): Methomyl Unit: The employer did not document that the stability of the structure and equipment on the Methomyl unit was considered for damage resulting from heat (temperature, stress during fire), pressure waves, overloading, chemical effects, vibration due to powered equipment, soft subsoil, and climatic effects (freezing, earthquake, hurricanes, wind.)

The penalty for Citation No. 1, Item No. 12 is modified to \$7,000.00.

(b) Respondent voluntarily agrees to provide confirmation to OSHA, for each of its units at the Institute Plant owned or operated by Respondent, consisting of the following units: Phosgene, MIC, Aldicarb, Carbaryl, Naphthol Refining, Larvin, Carbofuran, Carbosulfan, and Rhodimet, that the stability of the structure and equipment of each such unit was considered for damage resulting from heat (temperature, stress during fire), pressure waves, overloading, chemical effects, vibration due to powered equipment, soft subsoil, and climatic effects (freezing, earthquake, hurricanes, wind), and that the structure of each unit is appropriate for the equipment and processes contained in the structure. Respondent voluntarily agrees to provide to OSHA written confirmation for the MIC Unit and the Larvin Unit within four (4) months of the Review Commission's Final Order date in this case and to provide written confirmation for all remaining units within 24 months of the Review Commission's Final Order date in this case.

(c) Item No. 2 remains as issued. The penalty is modified to \$59,000.00

3. Respondent's Methomyl Unit is no longer operational, and Respondent has decided not to re-build or re-start the Unit for the manufacture of Methomyl at the Institute Plant. Respondent agrees that if, at any time within three years of the Review Commission's Final Order in this case, Respondent decides to re-build and operate the Methomyl Unit, Respondent will provide written notice to OSHA of its decision and will meet with OSHA to provide information about the safe re-building and operation of the Unit, including but not limited to

issues raised by the citations issued in this case, as amended by this Settlement Agreement. If the Methomyl Unit is to be re-built, Respondent will provide OSHA with verification that appropriate written operating procedures are in place and that employees are effectively trained in them prior to the restart of the Methomyl Unit.

4. Respondent withdraws its Notice of Contest to the Citations and Notification of Proposed Penalty as amended by this Settlement Agreement.

5. Respondent will pay the total penalty of \$143,000.00 within thirty days of the Administrative Law Judge's approval of this Settlement Agreement. A certified check shall be made payable to "OSHA-Labor" and forwarded to the Charleston OSHA Office at the following address:

U. S. Department of Labor  
Occupational Safety and Health Administration  
405 Capitol Street, Suite 407

Charleston, WV 25301

6. Respondent will post a copy of this Settlement Agreement in accordance with the requirements of 29 C.F.R. 2200.100(c) and 2200.7 at Building 2 (location) on Feb. 22, 2010, so as to provide notice to all affected employees at the worksite.

7. The parties agree that the Citations are amended to include the provisions of this Settlement Agreement. The Citations as amended by this Settlement Agreement and this Settlement Agreement shall become the Final Order of the Commission, and the parties consent to the entry of the attached Order Approving Settlement.

8. Neither this Agreement nor the Final Order of the Review Commission in this matter constitutes any admission by Respondent of any violation of the Act or the regulations or standards promulgated under the Act. Neither this Settlement Agreement nor any Final Order of the Review Commission resulting from or pursuant to this Settlement Agreement shall be

offered, used or admitted in evidence in any proceeding or litigation whether civil or criminal, other than in proceedings arising under the Occupational Safety and Health Act of 1970.

Respondent is entering into this Settlement Agreement without any prejudice to its rights to raise any defense or argument in any future or pending cases before the Review Commission.

Respondent retains the right to assert in any subsequent action or proceeding that any future or existing conditions identical or similar to those in the citations do not violate the Occupational Safety and Health Act or any of the regulations or standards promulgated thereunder. By entering into this Agreement, Respondent, its officers and directors, do not admit the truth of any alleged facts, any of the characterizations of the Company's alleged conduct, or any of the conclusions set forth in the citations, nor does Respondent, or any of its officers and directors, admit that the conditions described in the citations were the cause, proximate or otherwise, of any accident, injury, illness or death that may have occurred.

9. The Secretary is entering into this Agreement without prejudice to her right to use the Citations and Notification of Penalty, as amended by this Agreement, in connection with any future alleged violation of the Act, any characterization of any future alleged violation, or any future penalty proposed pursuant to the Act against Respondent.

10. Respondent agrees that this Agreement and its terms are enforceable under Section 11(b) of the Act, 29 U.S.C. § 660(b).

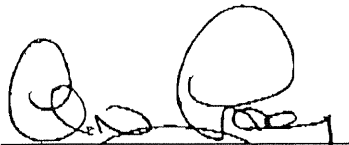
11. Each party agrees to bear its own attorneys' fees, costs and other expenses incurred by such party in connection with any stages of the above-referenced proceeding including, but not limited to, attorneys; fees and costs which may be available under the Equal Access to Justice Act, as amended.

BAYER CROPSCIENCE LP

U.S. DEPARTMENT OF LABOR

Deborah Greenfield  
Acting Deputy Solicitor

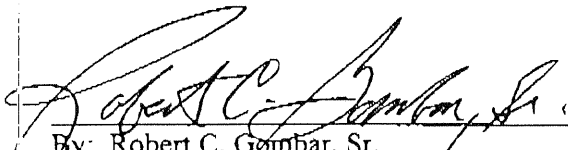
Catherine Oliver Murphy  
Regional Solicitor



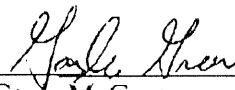
By: Nick Crosby  
Vice President, Institute Site Operations  
Bayer CropScience LP



By: Jeffrey Funke  
OSHA Area Director, Charleston



By: Robert C. Gombar, Sr.  
Eric J. Conn  
Attorneys for Respondent

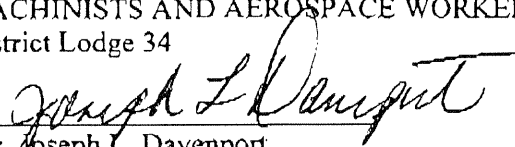


By: Gayle M. Green  
Attorney for Complainant

Dated: 2/19/10

Dated: 2/18/10

INTERNATIONAL ASSOCIATION OF  
MACHINISTS AND AEROSPACE WORKERS,  
District Lodge 34



By: Joseph L. Davenport  
Authorized Employee Representative

Dated: 2/12/2010