



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 28 2007

ASSISTANT ADMINISTRATOR
FOR ENFORCEMENT AND
COMPLIANCE ASSURANCE

Mr. Robert F. Van Voorhees
Bryan Cave L.L.P.
700 Thirteenth Street, N.W.
Washington, D.C. 20005-3960

Re: Response to Request for Correction Regarding Correction of Enforcement and Compliance History Online (ECHO) Information Pursuant to Environmental Protection Agency Quality Guidelines (RFC #06003, Sterling Chemicals)

Dear Mr. Van Voorhees:

This letter is in response to your Request for Correction (RFC) dated November 3, 2005, under the Environmental Protection Agency (EPA) *Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Environmental Protection Agency* (IQG) concerning the ECHO Information pertaining to Sterling Chemicals, Inc.'s Texas City, Texas, manufacturing facility.

You requested that EPA correct information contained in ECHO that you believe is inaccurate and misleading. The Agency has made many changes in response to your correction request. In addition we have modified ECHO to more clearly explain some information to the public. In particular, ECHO now explicitly indicates that assessed penalties may result from orders, settlements, or allowed claims in bankruptcy. An itemized list of the corrections requested, and the Agency's response, is attached to this letter.

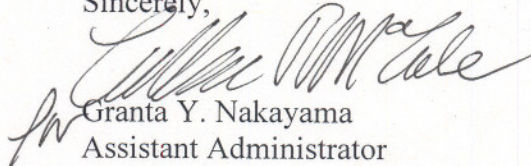
ECHO is a Web tool developed and maintained by EPA's Office of Enforcement and Compliance Assurance. The data included within ECHO are collected from other sources such as the Air Facility System (AFS), Permit Compliance System (PCS), Resource Conservation and Recovery Act Information System (RCRAInfo), and, for federal enforcement actions, the Integrated Compliance Information System (ICIS). Virtually all of the changes that you request pertain to information resident in ICIS; ICIS is not accessible to the public but some of the information entered into ICIS is viewed through the public portal called ECHO.

Several of your requested changes were made to entries in ICIS on December 15, 2005. However, some of the changes you requested will not be made because EPA disagrees with the suggested changes to database entries. EPA was able to more efficiently address your request by making changes to ECHO and how it describes the information displayed. The enclosed list of EPA's responses includes identification of the changes made and a list of those requested changes with which EPA disagrees along with an explanation of why those requested changes were not made.

Should you wish that EPA make changes to database entries in the future, we recommend that you utilize EPA's Integrated Error Correction Process (IECP), which is available for the ECHO service through the "How to Report an Error" line in the lower right quadrant of the ECHO opening screen, or by direct access at http://www.epa.gov/echo/how_to_report_an_error.html. For any database, including ECHO, you may also access the IECP by clicking on "Contact Us" at the bottom of the EPA home page (<http://www.epa.gov>) and then choosing "Report Data Errors" from the options listed on the "Contact Us" page.

If you are dissatisfied with this response, you may submit a Request for Reconsideration (RFR). EPA recommends that this request be submitted within 90 days of the date of this letter. To do so, send a written request to the EPA Information Quality Guidelines Processing Staff via mail (Information Quality Guidelines Staff, Mail Code 2811R, U.S. EPA, 1200 Pennsylvania Ave., N.W., Washington, D.C. 20460), electronic mail (quality@epa.gov), or fax (202-565-2441). The RFR should reference the request number assigned to the original request for correction (RFC #06003). Additional information that should be included in the request is listed on the EPA Information Quality Guidelines web site (www.epa.gov/quality/informationguidelines). Please contact Monica Jones at (202) 564-1641, should you have any questions about our response.

Sincerely,



Granta Y. Nakayama
Assistant Administrator

Attachment

Summary of Changes in Response to RFC #06003

Request 1) Case Name: Sterling Chemical Co., A Delaware Corporation [requested correction: Sterling Chemicals, Inc., A Delaware Corporation] You requested we change the information included in EPA's Enforcement and Compliance History Online (ECHO) Web tool to reflect the company name accurately in accordance with public records and the specific language of the opening paragraph of the Agreed Order entered by the court.

EPA Response: EPA has made this correction in ICIS; ECHO displays the information from ICIS and thus shows the correction.

Request 2) Court Docket Number. No Data [requested correction: Case No. 01-37805-H4-111]. You requested we change the information included in ECHO to provide the complete and accurate Court Docket Number.

EPA Response: EPA has made this correction in ICIS and thus the correct information now appears in ECHO.

Request 3) Enforcement Outcome: Final Order With Penalty [requested correction: "Agreed Order with allowed claim"] You requested we change the information included in ECHO to reflect that EPA and Sterling signed an Agreed Order Approving Settlement Between Debtors and [the] United States Environmental Protection Agency (Agreed Order) and to include the description provided in paragraph 14 of the Agreed Order that states the United States received an "allowed claim."

EPA Response: EPA's characterization of the enforcement outcome is correct. In addition, EPA will implement, as of October 5, 2007, changes to its ECHO report and data definitions to ensure it is clear to the public that assessed penalties may result from either orders, or settlements, or allowed claims in bankruptcy. (The changes to the definition have already been implemented in the ECHO Data Dictionary.)

The changes to the ECHO report and data definitions are as follows:

- The detailed facility report table will read "Total Federal Penalty Assessed or Agreed To (not necessarily an admission of liability)" with a note in the table row header that "EPA settles the vast majority of its enforcement actions and almost all of these cases are settled without an admission of liability. The agreement to pay a penalty as part of a settlement does not necessarily reflect an admission of liability for environmental violations by the company."
- The definition for federal penalty now reads "The total federal penalty assessed is the dollar penalty amount to be paid in a concluded enforcement action. EPA settles the vast majority of its administrative and civil judicial enforcement actions, and these settlements (often called a consent decree or consent order) include an agreed upon penalty amount. In most of these settlements, there is not a direct admission by the defendant of liability for violations. In a few cases that involve bankruptcy, the penalty amount may be determined as an "allowed claim" in bankruptcy and the amount actually recovered may be less than the amount of the allowed claim."

Request 4) Result of Voluntary Disclosure: No [requested correction: Yes] You requested we change the information included in ECHO to reflect that Sterling voluntarily and immediately reported the release.

EPA Response: EPA did not make this change because Sterling did not self-disclose to EPA that a CAA section 112(r)(a)(1) violation, which was the subject of EPA's enforcement action, occurred at the Texas City facility. The "Result of Voluntary Disclosure" flag that appears in ECHO identifies enforcement actions that resulted from entities self-disclosing subject violations to EPA. (While Sterling made required notifications under regulations implementing CERCLA section 103 and EPCRA section 304, these notifications were not the subject of the enforcement action.)

Request 5) Total Federal Penalty Sought: \$241,265 [requested correction: \$650,000] You requested we change the information included in ECHO to reflect the agreed amount of the claim consistent with paragraph 14 of the Agreed Order.

EPA Response: EPA has made this correction in ICIS and thus the correct information now appears in ECHO.

Request 6) Total Federal Penalty Assessed: \$650,000 [requested correction: \$0] You requested we change the information included in ECHO to show that no federal penalty was ever officially assessed.

EPA Response: EPA did not make this change because EPA disagrees both with your characterization that EPA agreed to accept an allowed claim in bankruptcy rather than assess a penalty under the Clean Air Act and with your assertion that no penalty was assessed.

EPA had initiated enforcement negotiations with Sterling, when Sterling availed itself of an automatic stay of EPA's enforcement action by seeking protection under bankruptcy law (11 USC section 362). To pursue its enforcement action, EPA sought to recover penalties by filing a proof of claim in the bankruptcy action. The proof of claim in this matter was for penalties assessed pursuant to section 113(b) of the CAA for Sterling's violations of section 112(r) of that statute.

The allowance of a claim in bankruptcy (including the amount thereof) is determined in accordance with non-bankruptcy law, 11 U.S.C. section 502. *See Raleigh v. Illinois Department of Revenue*, 530 U.S. 15, at 20 (2000). The non-bankruptcy provision at issue in this case – CAA section 113(b) – authorizes EPA to commence judicial actions either for a temporary or permanent injunction or “to assess and recover a civil penalty . . . or both” The CAA does not include authority to collect money other than penalties. EPA characterized its claim as a “penalty” because according to applicable, settled law it is a penalty.

The allowed general unsecured claim Sterling agreed to pay, which is treated as a penalty outside bankruptcy law (CAA section 113(b)), does not lose its characterization as a penalty in the resolution of the bankruptcy proceedings. Finally, Paragraph 14 the Agreed Order states on its face that the allowed general unsecured claim of \$650,000 is in “full settlement of the claim asserted in its proof of claim for civil penalties under the Clean Air Act.” Thus, the claim is properly characterized as a penalty in ECHO, with the additional descriptive language described under Response 4, above, in effect in the ECHO display.

Request 7) Total State/Local Penalty Assessed: no entry [requested correction: \$0 or "None"] You requested we change the information included in ECHO to reflect that there was no State or Local Penalty assessed in this case.

EPA Response: EPA makes no entry in such cases where there is no state or local involvement in the case, as is EPA’s understanding in this case. The choice of “None” is not an available option in the ICIS data input fields because this is a numeric field. And most importantly, an entry of “\$0 or None” could be misleading to indicate that a state or local enforcement proceeding occurred, but no penalty was assessed. To the best of our knowledge, there was no state or local enforcement action in this case, and thus the best value for this field is blank.

The Summary section of the ECHO Data Dictionary states that “Not all report sections will necessarily be present for each facility. If a report section is absent for a given facility, it simply means there was no relevant data matching the content of that section.” The absence of an entry (“null entry”) in ICIS ensures that the ECHO report will not portray an activity that did not occur.

Request 8) Total SEP Cost: no entry [requested correction: \$0 or "None"] You requested we change the information included in ECHO to provide information indicating that there was no SEP provided for in this case.

EPA Response: EPA makes no entry in such cases where there are no SEPs. The choice of “None” is not an available option in the ICIS data input fields because this is a

numeric field. And most importantly, to put a zero in this field could be misleading as it might suggest that there was a supplemental environmental project undertaken, but it had a zero dollar value, which is not correct.

And as explained above, the absence of an entry (“null entry”) in ICIS ensures that the ECHO report will not portray an activity that did not occur.

Request 9) Total Compliance Action Cost: no entry [requested correction: \$0] You requested we change the information included in ECHO to reflect the actual payment on the allowed claim as the total compliance cost.

EPA Response: EPA’s responses to your requests 7 and 8 apply here. If Sterling can provide actual cost documentation for the cost to come into compliance, then EPA can make any necessary changes. The figure Sterling requested is not a documented compliance cost.

Request 10) Total Cost Recovery: no entry [requested correction: \$241,265] You requested we change the information included in ECHO to show \$241,265 in total cost recovery.

EPA Response: EPA did not make this change because there is no cost recovery associated with this enforcement case. The ECHO enforcement case report that is the subject of this request pertains to Sterling’s 201 Bay Street South, Texas City, Texas facility; not the 5300 Campbell Bayou Road, Texas City, Texas “Malone Services Company” [Superfund] site. The Superfund bankruptcy claim for the Malone site was dismissed with prejudice under the Agreed Order. The United States collected no funds from Sterling for the Malone site. No “cost recovery” for the Malone site from any party has occurred to date.

Request 11) Defendant Name: Sterling Chemical Co. [requested correction: Sterling Chemicals, Inc.] You requested we change the information included in ECHO to accurately reflect the company name.

EPA Response: EPA has made this correction in ICIS and thus the correct information now appears in ECHO.

Request 12) Enforcement Conclusion Type: Proposed Judicial Settlement [requested correction: Agreed Judicial Settlement]. You requested we change the information included in ECHO to reflect the conclusion of this enforcement action.

EPA Response: EPA has changed the Enforcement Conclusion Type to “Consent Decree or Court Order Resolving Civil Judicial Action.” EPA believes this addresses the

substance of your request without causing EPA to expend resources to make additional changes to ICIS. This enforcement conclusion type reflects that the case was closed by issuance of an Agreed Order Approving Settlement Between Sterling and EPA.

Request 13) Enforcement Conclusion Dollar Amounts: these requests are the same as those presented in Requests 5 through 10 above.

EPA Response: Changes were made as explained in EPA's responses to Requests 5 through 10 above.

Case Summary comments were changed as follows:

Request 1) You requested that the citation in the Case Summary to section 113 of the Clean Air Act ("CAA"), 42 U.S.C section 7413, be corrected to section 112(r)(1) of the Clean Air Act (CAA), 42 U.S.C. §7412(r)(1).

EPA Response: EPA has made this correction.

Request 2) You requested that the company name in the Case Summary be changed from Sterling Chemical Co., A Delaware Corporation 201 Bay Street South Texas City, Galveston County, Texas 77590 to Sterling Chemicals, Inc., a Delaware Corporation, 201 Bay Street South, Texas City, Galveston County, Texas, 77590.

EPA Response: EPA has made this correction.

Request 3) You requested EPA replace the description of its asserted claims. Specifically, you requested we use the following language in the Case Summary: EPA asserted a claim for civil penalties under CAA § 113 alleging violation of § 112(r)(1) of the CAA by failing to maintain a safe facility taking such steps as are necessary to prevent releases. A release of chemicals that are used to manufacture styrene took place and was reported by Sterling on April 1, 1998.

EPA Response: As explained in EPA's response to Request 4 above, Sterling's disclosure on April 1, 1998, was required by regulation. We have included this sentence to address your request: "A release of chemicals that are used to manufacture styrene took place and was reported by Sterling *as required by regulation*, on April 1, 1998."

Request 4) You requested that the Case Summary reflect that Sterling denied violation of CAA Section 112(r)(1).

EPA Response: EPA has made this change to the Case Summary.

Request 5) You requested that the Case Summary be corrected to reflect that EPA was allowed a claim in bankruptcy of \$650,000 and collected \$241,265.

EPA Response: EPA has changed the Case Summary to reflect that it was allowed a claim in bankruptcy of \$650,000, but EPA did not include of the phrase "and collected \$241,265" because that amount was not collected by EPA. The language in the "Agreed Order Approving Settlement Between Debtors and United States Environmental Protection Agency stated as follows:

"Section V. Allowance of Claim paragraph 14. The United States shall have an Allowed Class 7 General Unsecured Claim under the Plan in the amount of six hundred and fifty thousand dollars (\$650,000) as full settlement of the claim asserted in its proof of claim for civil penalties under the Clean Air Act."

The Bankruptcy Court awarded EPA's claim for a \$650,000 penalty. However, EPA did not receive \$650,000 from Sterling. The US Treasury obtained \$20,024.34 from the sale of "warrants" that EPA received from Sterling as satisfaction of EPA's claim in the bankruptcy.