



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

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EPA REGION III, PHILA. PA

In the Matter of	)	U.S. EPA Docket Nos.: CERC-03-2012-
	)	0079; EPCRA-03-2012-0079
MPM Silicones, LLC	)	
260 Hudson River Road	)	
Waterford, New York 12188,	)	
	)	
Respondent.	)	
	)	Proceedings Pursuant to Sections 103 and
MPM Silicones, LLC	)	109 of the Comprehensive Environmental
3500 South State Route 2	)	Response, Compensation and Liability
Friendly, West Virginia 26146,	)	Act, 42 U.S.C. §§ 9603 and 9609, and
	)	Sections 304, 312 and 325 of the
Facility.	)	Emergency Planning and Community
	)	Right-to-Know Act, 42 U.S.C. §§ 11004, 11022
	)	and 11045
	)	

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement is proposed and entered into under the authority vested in the President of the United States by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. § 9609, as re-delegated to the Administrator of the U.S. Environmental Protection Agency ("EPA") and under the authority vested in the Administrator of EPA by Section 325 of the Emergency Planning and Community Right-to-Know Act ("EPCRA"), 42 U.S.C. § 11045, and under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" ("Consolidated Rules of Practice"), 40 C.F.R. Part 22 ("Part 22"). The Administrator has delegated these authorities to the Regional Administrator of EPA, Region III, who has in turn delegated them to the Director, Hazardous Site Cleanup Division, EPA Region III ("Complainant").

The parties agree to the commencement and conclusion of this cause of action by issuance of this Consent Agreement and Final Order (referred to collectively herein as "CA/FO") as prescribed by the Consolidated Rules of Practice pursuant to 40 C.F.R. § 22.13(b), and having consented to the entry of this CA/FO, agree to comply with the terms of this CA/FO.

**FINDINGS OF FACT**

1. MPM Silicones, LLC, (“Respondent”) is a New York limited liability company, with its principal place of business located at 260 Hudson River Road, in Waterford, New York.
2. As a corporation, Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and their respective regulations, 40 C.F.R. §§ 302.3, 355.61, and 370.66.
3. At all times relevant to this CAFO, Respondent has been in charge of, within the meaning of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), a silicones manufacturing facility located at 3500 South State Route 2 in Friendly, West Virginia, (“Facility”), with a Standard Industrial Classification Code of 2869 (industrial organic chemicals).
4. The Facility is a “facility” as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and their respective regulations, 40 C.F.R. §§ 302.3, 355.61, and 370.66.
5. On May 20, 2010, EPA conducted an inspection of the Facility to determine compliance with Section 103 of CERCLA and Sections 302-312 of EPCRA.
6. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires 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 to the environment, and to promulgate regulations establishing that quantity of any hazardous substance, the release of which shall be required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) (“Reportable Quantity” or “RQ”). The list of hazardous substances is codified at 40 C.F.R. § 302.4.
7. Section 302(a) of EPCRA, 42 U.S.C. § 11002(a), requires the Administrator of EPA to publish a list of Extremely Hazardous Substances (“EHSs”) and to promulgate regulations establishing that quantity of any EHS the release of which shall be required to be reported under Section 304(a) through (c) of EPCRA, 42 U.S.C. § 11004(a) through (c), (“Reportable Quantity” or “RQ”). The list of EHSs and their respective RQs is codified at 40 C.F.R. Part 355, Appendices A and B.
8. The State Emergency Response Commission (“SERC”) for the Facility is, and at all times relevant to this CA/FO has been, the West Virginia Division of Homeland Security and Emergency Management located at Building 1, Room EB-80, 1900 Kanawha Boulevard East in Charleston, West Virginia.
9. The Local Emergency Planning Committee (“LEPC”) for the Facility is, and at all times relevant to this CA/FO has been, the Tyler County Office of Emergency Services, with a mailing address of P.O. Box 238 in Middlebourne, West Virginia.

10. The Local Fire Department for the Facility is, and at all times relevant to this CA/FO has been, the Sistersville Volunteer Fire Department, located at 121 Maple Lane in Sistersville, West Virginia.

11. At all times relevant to this CA/FO, the Facility was a facility at which a hazardous chemical was produced, used or stored.

12. Beginning on or about 12:45 a.m. on January 18, 2009, and continuing until approximately 7:50 a.m. on January 18, 2009, an estimated 28,000 pounds of methyl chloride, Chemical Abstracts Service (“CAS”) Registry No. 74-87-3, was released from the Facility (the “Release”).

13. At approximately 12:45 a.m. on January 18, 2009, a lower explosive limit alarm sounded for the hydrochloric acid pad, the area in which the methyl chloride release occurred, signifying a possible release. Respondent investigated and found no evidence of a release. At approximately 7:00 a.m. on January 18, 2009, a Facility employee noticed vapors in the vicinity of the methyl chloride trailer at the Facility. The shift team leader arrived at the hydrochloric acid pad at 7:30 a.m. and realized that methyl chloride was being released.

**FINDINGS OF FACT RELATED TO THE  
VIOLATION OF SECTION 103 OF CERCLA**

14. The findings of fact contained in Paragraphs 1 through 13 of this CA/FO are incorporated by reference herein as though fully set forth at length.

15. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, a person in charge of a facility to immediately notify the National Response Center (“NRC”) established under Section 311(d)(2)(E) of the Clean Water Act, as amended, 33 U.S.C. § 1321(d)(2)(E), as soon as he/she has knowledge of a release (other than a federally permitted release) of a hazardous substance from such facility in a quantity equal to or greater than the RQ.

16. The chemical methyl chloride is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.

17. The Release from the Facility constitutes a release of a hazardous substance in a quantity equal to or exceeding the RQ for that hazardous substance, requiring immediate notification of the NRC pursuant to Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

18. The Release was not a “federally permitted release” as that term is used in Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and 40 C.F.R. § 302.6, and defined in Section 101(10) of CERCLA, 42 U.S.C. § 9601(10).

19. Respondent knew or should have determined that the Release was in a quantity equal to or exceeding its applicable RQ by approximately 7:30 a.m. on January 18, 2009.

20. Respondent determined that an RQ may have been exceeded at approximately 8:40 a.m. on January 18, 2009.

21. Respondent notified the NRC of the Release at approximately 8:48 a.m. on January 18, 2009.

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 103 OF CERCLA**

22. Respondent's failure to immediately notify the NRC of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ is a violation of Section 103 of CERCLA, 42 U.S.C. § 9603, and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

**FINDINGS OF FACT RELATED TO THE VIOLATION  
OF SECTION 304(a) AND (b) OF EPCRA – SERC**

23. The findings of fact contained in Paragraphs 1 through 22 of this CA/FO are incorporated by reference herein as though fully set forth at length.

24. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored to notify the SERC and LEPC immediately following a release of a hazardous substance or an EHS in a quantity equal to or exceeding the RQ for the hazardous substance or EHS.

25. The chemical methyl chloride is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.

26. The Release required immediate notification to the SERC pursuant to Section 304(a)(3) and (b) of EPCRA, 42 U.S.C. § 11004(a)(3) and (b), and 40 C.F.R. Part 355, Subpart C.

27. Respondent notified the SERC of the Release at approximately 8:57 a.m. on January 18, 2009.

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – SERC**

28. Respondent's failure to notify the SERC immediately of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE VIOLATION  
OF SECTION 304(a) AND (b) OF EPCRA – LEPC**

29. The findings of fact and conclusions of law contained in Paragraphs 1 through 28 of this CA/FO are incorporated by reference herein as though fully set forth at length.

30. Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), as implemented by 40 C.F.R. Part 355, Subpart C, requires, in relevant part, the owner or operator of a facility at which hazardous chemicals are produced, used, or stored to notify the SERC and LEPC immediately following a release of a hazardous substance or an EHS in a quantity equal to or exceeding the RQ for the hazardous substance or EHS.

31. The chemical methyl chloride is a hazardous substance, as defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), and 40 C.F.R. § 302.3, with an RQ of 100 pounds, as listed in 40 C.F.R. § 302.4.

32. The Release required immediate notification to the LEPC pursuant to Section 304(a)(3) and (b) of EPCRA, 42 U.S.C. § 11004(a)(3) and (b), and 40 C.F.R. Part 355, Subpart C.

33. Respondent notified the LEPC of the Release at approximately 9:00 a.m. on January 18, 2009.

**CONCLUSION OF LAW RELATED TO THE  
VIOLATION OF SECTION 304(a) AND (b) OF EPCRA – LEPC**

34. Respondent's failure to notify the LEPC immediately of the Release as soon as Respondent knew or should have known that a release of a hazardous substance had occurred at the Facility in an amount equal to or exceeding the applicable RQ is a violation of Section 304(a) and (b) of EPCRA, 42 U.S.C. § 11004(a) and (b), and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 312 OF EPCRA  
CALENDAR YEAR 2007**

35. The findings of fact and conclusions of law contained in Paragraphs 1 through 34 of the CA/FO are incorporated by reference herein as though fully set forth at length.

36. Section 312 of EPCRA, 42 U.S.C. § 11022, as implemented by 40 C.F.R. Part 370, requires the owner or operator of a facility required to prepare or have available a Material Safety Data Sheet (“MSDS”) for a hazardous chemical in accordance with the Occupational Safety and Health Administration (“OSHA”) Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200, and at which facility a hazardous chemical (including, but not limited to, a hazardous chemical which also qualifies as an EHS) is present at any one time during a calendar year in a quantity equal to or greater than its applicable minimum threshold level (“MTL”) or threshold planning quantity (“TPQ”) established by 40 C.F.R. § 370.10, to submit by March 1st of the following calendar year, a completed Emergency and Hazardous Chemical Inventory Form (“Chemical Inventory Form”) identifying the hazardous chemical and providing the information described in Section 312(d)(1) of EPCRA, 42 U.S.C. § 11022(d)(1), to the appropriate SERC, LEPC, and Local Fire Department with jurisdiction over the facility.

37. The following three chemicals, methyl carbamate, Silquest VS-142 and UCON 40 HA1100, are “hazardous chemicals” as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66, and as referenced in Section 312(c) of EPCRA, 42 U.S.C. § 11022(c).

38. Respondent is the owner or operator of a facility that is required to prepare or have available MSDSs for the three hazardous chemicals listed above under the OSHA Hazard Communication Standard, 29 U.S.C. §§ 651 *et seq.*, and 29 C.F.R. § 1910.1200.

39. Pursuant to 40 C.F.R. § 370.10, the MTL for each of the three hazardous chemicals is 10,000 pounds.

40. At any one time during calendar year 2007 Respondent had present at the Facility the three hazardous chemicals in quantities exceeding their respective MTLs.

41. By March 1, 2008, Respondent was required to submit to the SERC, LEPC, and the Local Fire Department, an Emergency and Hazardous Chemical Inventory Form identifying the three hazardous chemicals as present at the Facility during calendar year 2007 in quantities greater than their respective MTLs and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about those chemicals.

42. On or about March 1, 2008, Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2007 to the SERC, LEPC, and Local Fire

Department, as required by Section 312 of EPCRA, 42 U.S.C. § 11022, but form did not list the three hazardous chemicals methyl carbamate, Silquest VS-142 and UCON 40 HA1100, and the form over-reported the quantities of certain hazardous chemicals and under-reported the quantities of other hazardous chemicals.

43. Respondent failed to submit to the SERC, LEPC, and Local Fire Department, by March 1, 2008, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemicals as present at the Facility in quantities greater than their respective MTLs at any one time during calendar year 2007 and providing the required information concerning the hazardous chemicals.

**CONCLUSIONS OF LAW RELATED TO THE VIOLATION OF SECTION 312 OF  
EPCRA CALENDAR YEAR 2007**

44. Respondent's failure to submit to the SERC, LEPC, and Local Fire Department by March 1, 2008, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying the three hazardous chemicals as present at the Facility in quantities greater than their respective MTLs at any one time during calendar year 2007 and providing the required information concerning those chemicals constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

**FINDINGS OF FACT RELATED TO THE VIOLATION OF SECTION 312 OF EPCRA  
CALENDAR YEAR 2008**

45. The findings of fact and conclusions of law contained in Paragraphs 1 through 44 of the CA/FO are incorporated by reference herein as though fully set forth at length.

46. The following four chemicals, Fomrez Catalyst SUL-11A, Niox Y-10354, UCON 40HA1100 and vinylcyclohexane monoxide, are "hazardous chemicals" as defined by Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 40 C.F.R. § 370.66, and as referenced in Section 312(c) of EPCRA, 42 U.S.C. § 11022(c).

47. Pursuant to 40 C.F.R. § 370.10, the MTL for each of the four hazardous chemicals is 10,000 pounds.

48. At any one time during calendar year 2008 Respondent had present at the Facility the four hazardous chemicals in quantities exceeding their respective MTLs.

49. By March 1, 2009, Respondent was required to submit to the SERC, LEPC, and the Local Fire Department, an Emergency and Hazardous Chemical Inventory Form identifying the four hazardous chemicals as present at the Facility during calendar year 2008 in quantities

greater than their respective MTLs and providing the information required by Section 312(d) of EPCRA, 42 U.S.C. § 11022(d), about those chemicals.

50. On or about March 1, 2009, Respondent submitted an Emergency and Hazardous Chemical Inventory Form for calendar year 2008 to the SERC, LEPC, and Local Fire Department, as required by Section 312 of EPCRA, 42 U.S.C. § 11022, but the form did not list the four hazardous chemicals Fomrez Catalyst SUL-11A, Niax Y-10354, UCON 40HA1100 and vinylcyclohexane monoxide, and the form over-reported the quantities of certain hazardous chemicals and under-reported the quantities of other hazardous chemicals.

51. Respondent failed to submit to the SERC, LEPC, and Local Fire Department, by March 1, 2009, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying the hazardous chemicals as present at the Facility in quantities greater than their respective MTLs at any one time during calendar year 2008 and providing the required information concerning the hazardous chemicals.

#### **CONCLUSIONS OF LAW RELATED TO THE VIOLATION OF SECTION 312 OF EPCRA CALENDAR YEAR 2008**

52. Respondent's failure to submit to the SERC, LEPC, and Local Fire Department by March 1, 2009, a complete and accurate Emergency and Hazardous Chemical Inventory Form identifying the four hazardous chemicals as present at the Facility in quantities greater than their respective MTLs at any one time during calendar year 2008 and providing the required information concerning those chemicals constitutes a violation of Section 312 of EPCRA, 42 U.S.C. § 11022, and is, therefore, subject to the assessment of penalties under Section 325 of EPCRA, 42 U.S.C. § 11045.

#### **CIVIL PENALTY**

53. In full and final settlement and resolution of all allegations referenced in the foregoing Findings of Fact and Conclusions of Law, and in full satisfaction of all civil penalty claims pursuant thereto, for the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violation of Section 103 of CERCLA, 42 U.S.C. § 9603, in the amount of **\$15,053.00** ("CERCLA civil penalty"), and violations of Sections 304(a) and (b) and 312 of EPCRA, 42 U.S.C. §§ 11004(a) and (b), 11004(c), and 11022, set forth above, in the amount of **\$32,658.00** ("EPCRA civil penalty"), for a total penalty of **\$47,711.00**.

#### **PAYMENT TERMS**

54. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalties described in this CA/FO, Respondent shall pay the CERCLA civil penalty of \$15,053.00 and the EPCRA civil penalty of \$32,658.00 no later



than thirty (30) days after the effective date of the Final Order (the “final due date”) by either cashier’s check, certified check, or electronic wire transfer.

55. Payment of the CERCLA civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent’s name and address, and the Docket Number of this action;
- b. All checks shall be made payable to **EPA-Hazardous Substances Superfund**;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA  
ATTN: Superfund Payments  
Cincinnati Finance Center  
P.O. Box 979076  
St. Louis, MO 63197-9000  
Contact: Eric Volck (513-487-2105)

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA  
ATTENTION: Superfund Payments  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Eric Volck (513-487-2105)

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727

SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
D 68010727 Environmental Protection Agency

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX / Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

- h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

- i. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

- 56. Payment of the EPCRA civil penalty shall be made in the following manner:

- a. All payments by Respondent shall reference Respondent's name and address, and the Docket Number of this action;
- b. All checks shall be made payable to United States Treasury;
- c. All payments made by check and sent by regular mail shall be addressed to:

U.S. EPA  
Fines and Penalties  
Cincinnati Finance Center  
P.O. Box 979077  
St. Louis, MO 63197-9000  
Contact: Eric Volck 513-487-2105

- d. All payments made by check and sent by overnight delivery service shall be addressed for delivery to:

U.S. EPA  
Fines and Penalties  
U.S. Bank  
1005 Convention Plaza  
Mail Station SL-MO-C2GL  
St. Louis, MO 63101  
Contact: Eric Volck 513-487-2105

- e. All payments made by check in any currency drawn on banks with no USA branches shall be addressed for delivery to:

Cincinnati Finance  
US EPA, MS-NWD  
26 W. M.L. King Drive  
Cincinnati, OH 45268-0001

- f. All payments made by electronic wire transfer shall be directed to:

Federal Reserve Bank of New York  
ABA = 021030004  
Account No. = 68010727  
SWIFT address = FRNYUS33  
33 Liberty Street  
New York, NY 10045

Field Tag 4200 of the Fedwire message should read:  
D 68010727 Environmental Protection Agency

- g. All electronic payments made through the Automated Clearinghouse (ACH), also known as Remittance Express (REX), shall be directed to:

US Treasury REX /Cashlink ACH Receiver  
ABA = 051036706  
Account No.: 310006, Environmental Protection Agency  
CTX Format Transaction Code 22 - Checking

Physical location of U.S. Treasury facility:  
5700 Rivertech Court  
Riverdale, MD 20737  
Contact: Jesse White 301-887-6548 or REX, 1-866-234-5681

h. On-Line Payment Option:

WWW.PAY.GOV/PAYGOV

Enter sfo 1.1 in the search field. Open and complete the form.

i. Additional payment guidance is available at:

[http://www.epa.gov/ocfo/finservices/make\\_a\\_payment.htm](http://www.epa.gov/ocfo/finservices/make_a_payment.htm)

57. Respondent shall submit copies of the check, or verification of wire transfer or ACH, to the following persons:

Lydia Guy (3RC00)  
Regional Hearing Clerk  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

and

Cynthia T. Weiss (3RC42)  
Senior Assistant Regional Counsel  
U.S. EPA, Region III  
1650 Arch Street  
Philadelphia, PA 19103-2029

58. The CERCLA civil penalty and EPCRA civil penalty stated herein is based upon Complainant's consideration of a number of factors, including, but not limited to, the following: the nature, circumstances, extent and gravity of the violation, and with respect to the violator, ability to pay, any prior history of such violations, the degree of culpability, economic benefit (if any) resulting from the violation, and such matters as justice may require. The penalty is consistent with 40 C.F.R. Part 19 and the *Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act* (September 30, 1999).

59. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment by the final due date or to comply

with the conditions in this CA/FO shall result in the assessment of late payment charges, including interest, penalties, and/or administrative costs of handling delinquent debts.

60. Interest on the civil penalty assessed in this CA/FO will begin to accrue on the date that a copy of this CA/FO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

61. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue in accordance with 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's Resources Management Directives - Cash Management, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the final due date and an additional \$15.00 for each subsequent thirty (30) day period the penalties remain unpaid.

62. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalties which remain delinquent more than ninety (90) calendar days in accordance with 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent, in accordance with 31 C.F.R. § 901.9(d).

63. Failure by the Respondent to pay the CERCLA civil penalty and the EPCRA civil penalty assessed by the Final Order in full by the final due date may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

### **GENERAL PROVISIONS**

64. For the purpose of this proceeding, Respondent admits to the jurisdictional allegations set forth above.

65. Respondent agrees not to contest EPA's jurisdiction with respect to the execution or enforcement of the CA/FO.

66. Except as set forth in Paragraph 64 above, for the purpose of this proceeding, Respondent neither admits nor denies factual allegations or legal conclusions set forth in this Consent Agreement, but expressly waives its rights to contest said allegations and conclusions.

67. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the Final Order under to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045.

68. The provisions of the CA/FO shall be binding upon Respondent, its officers, directors, agents, servants, employees, and successors or assigns. By his or her signature below, the person signing this Consent Agreement on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of the Consent Agreement and accompanying Final Order.

69. This CA/FO resolves only those civil claims which are alleged herein. Nothing herein shall be construed to limit the authority of the Complainant to undertake action against any person, including the Respondent in response to any condition which Complainant determines may present an imminent and substantial endangerment to the public health, public welfare or the environment. Nothing in this CA/FO shall be construed to limit the United States' authority to pursue criminal sanctions.

70. Each party to this action shall bear its own costs and attorney's fees.

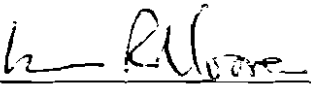
71. By entering into this CA/FO, Respondent does not admit any liability for the civil claims alleged herein.

MPM Silicones, LLC

EPA Docket Nos. CERC-03-2012-0079  
EPCRA-03-2012-0079

FOR MPM Silicones, LLC

By: Momentive Performance Materials USA Inc., its Managing Member

  
\_\_\_\_\_  
Ian Moore  
President, Silicones Americas

January 26, 2012  
DATE

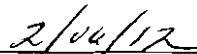
MPM Silicones, LLC

EPA Docket Nos. CERC-03-2012-0079  
EPCRA-03-2012-0079

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



\_\_\_\_\_  
Ronald J. Borsellino, Director  
Hazardous Site Cleanup Division



\_\_\_\_\_  
DATE





UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

<b>In the Matter of</b>	)	<b>U.S. EPA Docket Nos.: CERC-03-2012-</b>
	)	<b>0079; EPCRA-03-2012-0079</b>
<b>MPM Silicones, LLC</b>	)	
<b>260 Hudson River Road</b>	)	
<b>Waterford, New York 12188,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	<b>Proceedings Pursuant to Sections 103 and</b>
<b>MPM Silicones, LLC</b>	)	<b>109 of the Comprehensive Environmental</b>
<b>3500 South State Route 2</b>	)	<b>Response, Compensation and Liability</b>
<b>Friendly, West Virginia 26146,</b>	)	<b>Act, 42 U.S.C. §§ 9603 and 9609, and</b>
	)	<b>Sections 304, 312 and 325 of the</b>
<b>Facility.</b>	)	<b>Emergency Planning and Community</b>
	)	<b>Right-to-Know Act, 42 U.S.C. §§ 11004, 11022</b>
	)	<b>and 11045</b>
	)	

**FINAL ORDER**

Pursuant to Section 109 of the Comprehensive Emergency Response, Compensation and Liability Act, 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. § 11045, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, the foregoing Consent Agreement is hereby approved and incorporated by reference into this Final Order. The Respondent is ordered to comply with the terms of the referenced Consent Agreement.

**Effective Date**

This Final Order shall become effective upon the date of its filing with the Regional Hearing Clerk.

*Renee Sarajian*  
\_\_\_\_\_  
Renee Sarajian  
Regional Judicial Officer  
EPA, Region III

*2/8/12*  
\_\_\_\_\_  
DATE

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION III  
1650 Arch Street  
Philadelphia, Pennsylvania 19103-2029

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Facility.	)	Emergency Planning and Community
	)	Right-to-Know Act, 42 U.S.C. §§ 11004,
	)	11022 and 11045
	)	

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of Consent Agreement and Final Order, along with enclosures and/or attachments, for the above-referenced matter, with the Regional Hearing Clerk, EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that a true and correct copy of the Consent Agreement and Final Order, along with its enclosures and/or attachments, was sent to:

Via certified mail, return receipt requested

Stephanie Couhig, Esquire  
EHS Counsel  
Momentive Specialty Chemicals Inc.  
180 East Broad Street  
Columbus, Ohio 43215

FEB 09 2012

Date



Cynthia T. Weiss (3RC42)  
Senior Assistant Regional Counsel