



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 13 2007

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Nancy Lake Martin, Senior Environmental & Safety Counsel
BASF Corporation
100 Campus Drive
Florham Park, NJ 07932

Re: BASF Corporation, Greenville, Ohio, Consent Agreement and Final Order
Docket No: CERCLA-05-2007-0014

Dear Ms. Martin:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on JUL 13 2007.

Please pay the civil penalty in the amount of \$13,359.45 in the manner prescribed in paragraph 28, and reference you check with the billing document number 2750730B016 and the docket number CERCLA-05-2007-0014.

Your payment is due on AUG 13 2007 [within 30 days of filing date].

Please feel free to contact James Entzminger at (312) 886-4062 if you have any questions regarding the enclosed documents. Please direct any legal questions to Eileen L. Furey, Associate Regional Counsel, at (312) 886-7950. Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:)	Docket No CERCLA-05-2007-0014
)	
BASF Corporation)	Proceeding to Assess a Civil Penalty under
Greenville, Ohio)	Section 109(b) of the Comprehensive
)	Environmental Response, Compensation,
)	and Liability Act.
Respondent)	

Consent Agreement and Final Order
Preliminary Statement

1. This is an administrative action commenced and concluded under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b), and Sections 22.13(b) and 22.18(b)(2) and (3) of the “Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits” (Consolidated Rules), as codified at 40 C.F.R. Part 22 (2005).

2. The Complainant is, by lawful delegation, the Chief, Chemical Emergency Preparedness and Prevention Section, Emergency Response Branch 1, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

3. Respondent is BASF Corporation, a corporation doing business in the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a complaint, the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO). 40 C.F.R. § 22.13(b) (2005).

5. BASF Corporation and U.S. EPA (jointly the “Parties”) agree that settling this action without the filing of a complaint or the adjudication of any issue of facts or law is in their interest and in the public interest.

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. BASF Corporation admits the jurisdictional allegations in this CAFO, and neither admits nor denies the factual allegations in this CAFO.

8. BASF Corporation waives its right to request a hearing as provided at 40 C.F.R. § 22.15(c), any right to contest the allegations in this CAFO, and its right to appeal this CAFO.

Statutory and Regulatory Background

9. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires any person in charge of a facility to immediately notify the National Response Center (NRC) as soon as that person has knowledge of any release of a hazardous substance from the facility in an amount equal to or greater than the hazardous substance's reportable quantity.

10. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), the U.S. EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, and to \$32,500 per day for violations that occurred after March 15, 2004.

Factual Allegations and Violations

11. Respondent is a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

12. At all time relevant to this CAFO, Respondent was in charge of the facility located at 1175 Martin Street, Greenville, Ohio (Facility).

13. Respondent's Greenville Facility produces resins and related products.

14. Respondent's Facility consists of buildings, structures, equipment, pipe or pipeline, storage containers, or any site or area where a hazardous substance has been deposited, stored, or placed, or otherwise come to be located.

15. Respondent's Greenville Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. At all times relevant to this CAFO, Respondent produced, used or stored xylene at its Facility.

17. Xylene (CAS 1330-20-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

18. Xylene (CAS 1330-20-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

19. On September 21, 2004, beginning at or about 11:30 a.m., approximately 508 pounds of xylene spilled, leaked, pumped, discharged, or escaped into the land surface or subsurface strata, or ambient air from Respondent's Facility (the Release).

20. In a 24 hour time period, the Release of xylene exceeded the 100 pound reportable quantity.

21. The Release of xylene from the Facility is a "release" as that term is defined under Section 101(22) of CERCLA 42 U.S.C. § 9601(22).

22. The Release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

23. On September 21, 2004, at approximately 11:30 a.m., an employee at the Respondent's Facility discovered the Release.

24. Respondent notified the NRC of the Release on September 23, 2004, at 3:45 p.m.

25. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the Release.

26. Each day Respondent failed to notify immediately the NRC of the Release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Civil Penalty

27. In consideration of Respondent's cooperation, return to compliance, and willingness to quickly resolve this matter, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$13,359.45.

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$13,359.45 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund," to:

U.S. EPA – Region 5
ATTN: Superfund Receivables
P.O. Box 371531
Pittsburgh, PA 15251-7531

The check must note the case title of this matter: In the Matter of BASF Corporation, the docket number of this CAFO, and the billing document number 2750730B016.

29. A transmittal letter, stating the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

James Entzminger, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
77 West Jackson Blvd.
Chicago, IL 60604-3590

Eileen L. Furey, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3590

30. This civil penalty is not deductible for federal tax purposes.

31. If Respondent does not timely pay the civil penalty, U.S. EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties and the United States' enforcement expenses for the collection action. The validity, amount and appropriateness of the civil penalty are not reviewable in a collection action.

32. Interest will accrue on any amount overdue from the date the payment was due at a rate established pursuant to 31 U.S.C. § 3717. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, U.S. EPA will assess a six percent per year penalty on any principal amount not paid within 90 days of the date that this CAFO had been entered by the Regional Hearing Clerk.

General Provisions

33. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the CAFO.

34. This CAFO does not affect the right of the U.S. EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violations of law.

35. This CAFO does not affect Respondent's responsibility to comply with CERCLA and other applicable federal, state and local laws and regulations.

36. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA.

37. The terms of this CAFO bind Respondent, its successors and assigns.

38. Each person signing this consent agreement certifies that he or she has the authority to sign this consent agreement for the party whom he or she represents and to bind that party to its terms.

39. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

40. This CAFO constitutes the entire agreement between the Parties.

SIGNATORIES

U.S. Environmental Protection Agency, Complainant

Date: July 2, 2007 By: Mark J. Horwitz
Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section
Emergency Response Branch 1
Superfund Division
U.S. EPA Region 5

Date: July 5, 2007 By: Richard C. Karl
Richard C. Karl, Director
Superfund Division
U.S. EPA Region 5

BASF Corporation, Respondent

Date: JUNE 18, 2007 By: James E. Mason
Signature
JAMES E. MASON - SITE MANAGER
Printed Name and Title

**Consent Agreement and Final Order
IN THE MATTER OF:
BASF Corporation
Greenville, Ohio
Docket No CERCLA-05-2007-0014**

Consent Agreement and Final Order

IN THE MATTER OF:

BASF Corporation

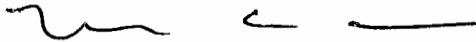
Greenville, Ohio

Docket No CERCLA-05-2007-0014

FINAL ORDER

This Consent Agreement and Final Order, as agreed to by the Parties, shall become effective immediately upon filing with the Regional Hearing Clerk. IT IS SO ORDERED.

Date: 7/12/07

By: 

Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

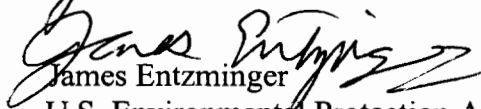
Certificate of Service

I, James Entzminger, certify that I hand delivered one original and one copy of the Consent Agreement and Final Order, docket number _____ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency; personally served a copy on the Regional Judicial Officer, via interoffice mail; and mailed one original by first-class, postage prepaid, certified mail, return receipt requested, to Respondent' s Counsel by placing it in the custody of the United States Postal Service addressed as follows:

Nancy Lake Martin
Senior Environmental & Safety Counsel
BASF Corporation
100 Campus Drive
Florham Park, NJ 07932

James E. Mason, Site Manager
BASF Corporation
1175 Martin Street
Greenville, OH 45331-1886

On the 13 day of July, 2007.



James Entzminger
U.S. Environmental Protection Agency
Region 5

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