



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

AUG 30 2019

REPLY TO THE ATTENTION OF

ELECTRONIC SERVICE
VIA E-MAIL

Roy Strom
Chief Executive Officer
W2Fuel Adrian II, LLC
1571 West Beecher Road
Adrian, Michigan 49221

Re: W2Fuel Adrian II, LLC, Adrian, Michigan, Consent Agreement and Final Order
Docket No. CERCLA-05-2019-0003

Dear Mr. Strom:


Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on August 30, 2019.

Please pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$6,883 in the manner prescribed in paragraph 28, and reference your check with the billing document number 2751930B004 and the docket number CERCLA-05-2019-0003.

Your payment is due on September 30, 2019.

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 Puja Lakhani, Associate Regional Counsel, at (312) 353-3190. Thank you for your assistance in resolving this matter.

Sincerely,


Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

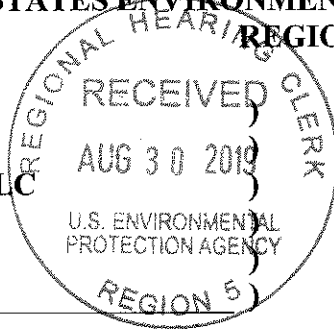
cc: Captain Emmitt McGowan, Chairperson (w/ enclosure)
State Emergency Response Commission
EMHSD/Michigan Department of State Police
Post Office Box 30634
Lansing, Michigan 48909

Michael Young (w/ enclosure)
State Emergency Response Commission
Michigan Department of Environmental Quality
Post Office Box 30457
Lansing, Michigan 48909

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

W2Fuel Adrian II, LLC
Adrian, Michigan,
Respondent.



Docket No. CERCLA-05-2019-0003

Proceeding to Assess a Civil Penalty Under
Section 109(b) of the Comprehensive
Environmental Response, Compensation and
Liability Act

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.

2. The Complainant is, by lawful delegation, the Chief of Emergency Response Branch 1, Superfund & Emergency Management Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is W2Fuel Adrian II, LLC, a Limited Liability Company doing business in the State of Michigan.

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).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of fact or law is in their interest and in the public interest.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO, and the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. Respondent admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. Respondent 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 reportable quantity of the hazardous substance.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) provides a mechanism to alert federal agencies that a response action may be necessary to prevent deaths or injuries to emergency responders, facility personnel and the local community. A delay or failure to notify could seriously hamper the governments' response to an emergency and pose serious threats to human health and the environment.

11. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$32,500 per day of violation for each violation that occurred after March 15, 2004 through January 12, 2009, to \$37,500 per day of violation for each violation that occurred after January 12, 2009 through November 2, 2015,

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015), amending 28 U.S.C. § 2461 note, and the implementing regulations at 40 C.F.R. Part 19 increased the statutory maximum penalty to \$53,907 per day of violation for each violation that occurred after November 2, 2015 and for which penalties are assessed on or after August 1, 2016 but before January 15, 2017, to \$54,789 per day of violation that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2017 but before January 15, 2018, to \$55,907 per day of violation for each violation that occurred after November 2, 2015 and for which penalties are assessed on or after January 15, 2018 but before February 6, 2019, and to \$57,317 per day of violation for each violation that it assessed after February 6, 2019.

Factual Allegations and Alleged Violations

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

13. At all times relevant to this CAFO, Respondent was in charge of the facility located at 1571 West Beecher Road, Adrian, Michigan (facility).

14. Respondent’s facility consists of a building, structure, equipment, pipe or pipeline, pit, impoundment, storage container, or any site or area where a hazardous substance has been stored, placed, or otherwise come to be located.

15. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

16. Methanol (CAS #67-56-1) is a “hazardous substance” as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. Methanol (CAS #67-56-1) has a reportable quantity of 5,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On April 7 and 8, 2019, a release occurred from Respondent's facility of approximately 24,033.54 pounds of methanol (the release).

19. In a 24-hour time period, the release of methanol exceeded 5,000 pounds.

20. During the release, approximately 24,033.54 pounds of methanol spilled, leaked, discharged, or escaped into the surface water, land surface or subsurface strata.

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

22. Respondent had knowledge of the release on April 9, 2019, at approximately 6:30 a.m.

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

24. Respondent notified the NRC of the release on April 15, 2019, at 5:43 a.m.

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

26. Respondent's failure to immediately notify the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Civil Penalty

27. Complainant has determined that an appropriate civil penalty to settle this action is \$6,883 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violation

and any other matters as justice may require. Complainant also considered U.S. EPA's 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, dated September 30, 1999 (EPCRA/CERCLA Enforcement Response Policy).

28. Within 30 days after the effective date of this CAFO, Respondent must pay a \$6,883 civil penalty for the CERCLA violation. Respondent must pay the penalty by submitting an electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

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

In the comment or description field of the electronic funds transfer, state the following: W2Fuel Adrian II, LLC, the docket number of this CAFO and the billing document number.

For payments made through Automated Clearinghouse (ACH) also known as REX or remittance express, submitting an ACH electronic funds transfer, payable to "EPA Hazardous Substance Superfund," and sent to:

US Treasury REX/Cashlink ACH Receiver
ABA: 051036706
Account Number: 310006, Environmental Protection Agency
CTX Format Transaction Code 22-checking

In the comment area of the electronic funds transfer, state the following: W2Fuel Adrian II, LLC, the docket number of this CAFO and the billing document number.

29. Respondent must send a copy of the electronic payment to:

Regional Hearing Clerk (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

James Entzminger (SE-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Puja Lakhani (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. 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 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

33. Pursuant to 40 C.F.R. §§ 22.5 and 22.6, the parties' consent to service of this CAFO by email at the following email addresses: lakhani.puja@epa.gov (for Complainant) and rstrom@w2fuel.com (for Respondent). See 40 C.F.R. §§ 22.5-6.

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

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

36. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

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

38. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

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

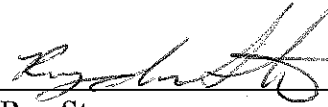
41. Each party agrees to bear its own costs and attorney's fees in this action.

42. This CAFO constitutes the entire agreement between the parties.

In the Matter of: W2Fuel Adrian II, LLC, Adrian, Michigan
Docket No. CERCLA-05-2019-0003

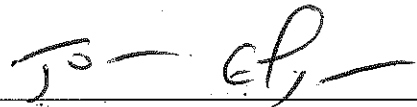
W2Fuel Adrian II, LLC, Respondent

8-12-19
Date



Roy Strom
Chief Executive Officer
W2Fuel Adrian II, LLC

U.S. Environmental Protection Agency, Complainant

8-27-19
Date


Jason El-Zein, Chief
Emergency Response Branch 1
U.S. Environmental Protection Agency
Region 5

8/28/19
Date

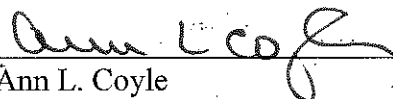

Douglas Ballotti, Director
Superfund & Emergency Management Division
U.S. Environmental Protection Agency
Region 5

In the Matter of: W2Fuel Adrian II, LLC, Adrian, Michigan
Docket No. CERCLA-05-2019-0003

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. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

8/28/19
Date


Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

In the Matter of: W2Fuel Adrian II, LLC, Adrian, Michigan
Docket No. CERCLA-05-2019-0003

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on August 30, 2019 in the following manner to the addressees:

Copy by E-mail
For Respondent:

Roy Strom
Chief Executive Officer
W2Fuel Adrian II, LLC
1571 West Beecher Road
Adrian, Michigan 49221
rstrom@w2fuel.com


Copy by E-mail to
Attorney for Complainant:

Puja Lakhani
lakhani.puja@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
Coyle.ann@epa.gov

Dated: August 30, 2019



DaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5