

In the Matter of:)
)
Motiva Enterprises LLC)
700 Milam Street)
Houston, Texas 77002)
)
Respondent.)
)
Motiva Enterprises LLC)
3445 Fairfield Avenue)
Baltimore MD, 21226)
)
Facility.)

EPA Docket No.: CERCLA-03-2008-0352

Proceedings Pursuant to Section 103 and 109
of the Comprehensive Environmental Response
Compensation and Liability Act, as amended,
("CERCLA"), 42 U.S.C. §§ 9603 and 9609

FINAL ORDER

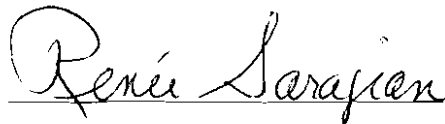
Pursuant to Sections 103 and 109 of the Comprehensive Environmental Response Compensation and Liability Act, as amended, ("CERCLA"), 42 U.S.C. §§ 9603 and 9609, and the delegated authority of the undersigned, and in accordance with 40 C.F.R. Part 22, and based on the representations in the Consent Agreement, 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.

U.S. ENVIRONMENTAL PROTECTION AGENCY

Date: 8/21/08



Renée Sarajian
Regional Judicial Officer
EPA, Region III

REC'D
AUG 21 11:19 AM '08



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


In the Matter of:)	
)	EPA Docket No.: CERCLA-03-2008-0352
Motiva Enterprises LLC)	
700 Milam Street)	
Houston, Texas 77002)	
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Respondent.)	Proceedings Pursuant to Section 103 and 109
)	of the Comprehensive Environmental Response
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)	("CERCLA"), 42 U.S.C. §§ 9603 and 9609
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3445 Fairfield Avenue)	
Baltimore MD, 21226)	
)	
)	
Facility.)	

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on the date provided below, I hand-delivered and filed the original of the signed Consent Agreement and Final Order with the Regional Hearing Clerk, U.S. EPA, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103-2029, and that true and correct copies of the Consent Agreement and Final Order were sent by first class mail to:

Roberta S. Lewis
One Shell Plaza
910 Louisiana - OSP 4864
Houston, TX 77002

8/21/08
DATE



Jefferie E. Garcia (3RC42)
Assistant Regional Counsel
Counsel for Complainant
(215) 814-2697



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

In the Matter of:)
Motiva Enterprises LLC) EPA Docket No.: CERCLA-03-2008-0352
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Motiva Enterprises LLC)
3445 Fairfield Avenue)
Baltimore MD, 21226)
Facility.)

CONSENT AGREEMENT

STATUTORY AUTHORITY

This Consent Agreement ("CA") is proposed and entered into under the authority vested in the Administrator of the U.S. Environmental Protection Agency ("EPA") by Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. § 9609, and under the authority provided by the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation 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

EPA makes the following findings of fact, which Respondent neither admits nor denies:

1. Respondent is a Delaware limited liability company located on the 11th Floor of the Pennzoil North Tower, 700 Milam Street, in Houston, Texas.
2. Respondent is a “person” as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21), and 40 C.F.R. § 302.3.
3. Beginning in or about January 1998, continuing through the date of filing this CA/FO, and at all times relevant to this CA/FO, Respondent has been the owner or operator, and therefore in charge of, within the meaning of Section 103(a) of CERCLA 42 U.S.C. § 9603(a), the facility located at 3445 Fairfield Avenue, in Baltimore, Maryland (“Respondent’s facility” or “Facility”).
4. The Respondent’s facility is a “facility”, as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9), and 40 C.F.R. § 302.3.
5. On June 21, 2007, EPA conducted an inspection of the Facility to determine its compliance with the requirements of Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 302-312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 U.S.C. § 11002-22.
6. On or about June 11, 2008, EPA issued a Show Cause letter to Motiva indicating that the Agency was considering the assessment of penalties against Motiva for violations of Section 103 of CERCLA, 42 U.S.C. § 9603.
7. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), requires the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present a 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.
8. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), as implemented by 40 C.F.R. Part 302, requires, in relevant part, that a person in charge of a facility, 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, 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), of such release.

9. Mixed xylene is a "hazardous substance" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), 40 C.F.R. § 302.4, with an RQ of one hundred (100) pounds.

10. Beginning on or about July 27, 2006, at or about 4:51 p.m, an amount equal to or greater than the RQ of mixed xylene, Chemical Abstracts Service ("CAS") No. 1330-20-7, was released from Respondent's Motiva Facility ("the Release").

11. On or about July 28, 2006 at or about 6:00 p.m., Eastern Standard Time, Respondent notified the NRC of the Release using the NRC web site.

12. The Release from Respondent's Facility constitutes a release of a hazardous substance in a quantity equal to, or greater than, the RQ for that hazardous substance.

13. 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), and 40 C.F.R. § 302.3.

14. Although Respondent notified the NRC of the Release, Respondent did not notify the NRC of the Release as required by Section 103 of CERCLA, 42 U.S.C. § 9603, and 40 C.F.R. § 302.6, which require immediate notification as soon as the Respondent knew or should have known of the Release.

**EPA'S CONCLUSION OF LAW RELATED TO THE
VIOLATION OF SECTION 103 OF CERCLA**

15. Respondent's failure to notify the NRC immediately of the Release, as soon as the Respondent knew or should have known of the Release of mixed xylene from the Facility in an amount equal to or in excess of its 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.

CIVIL PENALTY

16. For the purpose of this proceeding, the Respondent consents to the assessment of a civil penalty for the violations of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), set forth above, in the amount of \$8,061.00.

PAYMENT TERMS

17. In order to avoid the assessment of interest, administrative costs, and late payment penalties in connection with the civil penalty described in this CA/FO, the Respondent must pay the civil penalty no later than thirty (30) days after the effective date of the Final Order (the “final due date”) by submitting the CERCLA penalty of \$8,061.00 by wire transfer to:

Mellon Bank
Pittsburgh PA
ABA No. 043000261
Credit EPA Account No.: 9108552

18. The Respondent shall submit proof of the wire transfer, noting the title and docket numbers of this case, to the following persons:

Lydia Guy (3RC00) Regional Hearing Clerk U.S. EPA, Region III 1650 Arch Street Philadelphia, PA 19103-2029	and	Jefferie E. Garcia (3RC42) Assistant Regional Counsel U.S. EPA Region III 1650 Arch Street Philadelphia, PA 19103-2029
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19. The CERCLA civil penalty stated herein is based upon Complainant’s consideration of a number of factors, including, but not limited to, the penalty criteria set forth in Section 109 of CERCLA, 42 U.S.C. § 9609, and 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)*.

20. 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.

21. 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 penalty that is paid within thirty (30) calendar days after the final due date. 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). Interest on any stipulated penalties

assessed pursuant to this CA/FO will begin to accrue on the date that a written demand for such penalties is mailed or hand-delivered to Respondent.

22. 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 penalty remains unpaid.

23. A penalty charge of six (6) percent per year will be assessed monthly on any portion of the civil penalty which remains 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).

24. Failure by the Respondent to pay the \$8,061.00 penalty assessed by the Final Order ("FO") 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. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.

GENERAL PROVISIONS

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

26. For the purpose of this proceeding, Respondent agrees not to contest the Environmental Protection Agency's jurisdiction with respect to the execution or enforcement of the CA/FO.

27. For the purpose of this proceeding, Respondent neither admits nor denies factual allegations and conclusions of law set forth in this CA/FO, but expressly waives its rights to contest said allegations in this proceeding.

28. For the purpose of this proceeding, Respondent expressly waives its right to a hearing and to appeal the FO under Section 109 of CERCLA, 42 U.S.C. § 9609.

29. 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 CA on behalf of the Respondent is acknowledging that he or she is fully authorized by the party represented to execute this CA and to legally bind Respondent to the terms and conditions of the CA and accompanying FO.

30. 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.

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

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

FOR MOTIVA ENTERPRISES LLC

Jerry V. Bolden
SIGNATURE


August 4, 2008
DATE

Title: *General Manager -
Motiva Distribution*


In re: Motiva Enterprise LLC.

U.S. EPA Docket No. CERCLA-03-2008-0352

FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY



James J. Burke, Director
Hazardous Site Cleanup Division



DATE