



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

DEC 19 2012

REPLY TO THE ATTENTION OF:

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Ms. Frances McKay  
Plant Manager  
PVS Chemical Solutions, Inc,  
12260 South Carondelet Avenue  
Chicago, Illinois 60633

Re: PVS Chemical Solutions, Inc., Chicago, Illinois, Consent Agreement and Final Order  
Docket No. CERCLA-05-2013-0006

Dear Ms. McKay:

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 December 19, 2012.

Please pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$8,900 in the manner prescribed in paragraph 27, and reference your check with the billing document number CERCLA-05-2013-0006 and the docket number 2751330B006.

Your payment is due on January 18, 2013.

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 Terence Stanuch, Associate Regional Counsel, at (312) 886-8044. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY DEC 19 2012

REGION 5  
CERCLA-05-2013-0006

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

<b>In the Matter of:</b>	)	<b>Docket No.</b>
	)	
PVS Chemical Solutions, Inc.	)	<b>Proceeding to Assess a Civil Penalty Under</b>
Chicago, Illinois,	)	<b>Section 109(b) of the Comprehensive</b>
	)	<b>Environmental Response, Compensation and</b>
<b>Respondent.</b>	)	<b>Liability Act</b>
	)	

**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. §§ 22.13(b) and 22.18(b)(2) and (3).

2. The Complainant is, by lawful delegation, the Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is PVS Chemical Solutions, Inc., a Michigan corporation doing business in the State of Illinois.

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 this CAFO has been negotiated in good faith and 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; neither admits nor denies the factual allegations in this CAFO; and retains the right to contest the factual allegations in this CAFO in any other proceedings not related to 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 government's 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, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$32,500 per day of violation

that occurred after March 15, 2004 through January 12, 2009, and to \$37,500 per day of violation for violations that occur after January 12, 2009.

**Factual Allegations**

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 12260 South Carondelet Avenue, Chicago, Illinois (the Facility).

14. Respondent's Facility consists of buildings, structures, installation, equipment, pipe or pipeline, storage containers, motor vehicles, or any site or area where a hazardous substance has been deposited, 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. Sulfuric acid (CAS #7664-93-9) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

17. Sulfuric acid (CAS #7664-93-9) has a reportable quantity of 1,000 pounds, as listed at 40 C.F.R. Part 302, Table 302.4.

18. On March 26, 2011, at or about 9:00 a.m., a release occurred from Respondent's Facility of approximately 2,845 pounds of sulfuric acid (the Release).

19. In a 24 hour time period, the Release of sulfuric acid exceeded 1,000 pounds.

20. During the Release, approximately 2,845 pounds spilled, leaked, poured, emptied, discharged, escaped, or dumped into the 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's employee had knowledge of the Release, on March 26, 2011 at approximately 9:00 a.m., and he notified his supervisor of the Release at approximately 10:30 a.m. on the same day.

23. Respondent notified the NRC of the Release, on March 26, 2011 at 12:20 p.m.

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

25. 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**

26. Complainant has determined that an appropriate civil penalty to settle this action is \$8,900 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 alleged 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).

27. Within 30 days after the effective date of this CAFO, Respondent agrees to pay a civil penalty of \$8,900 for the alleged CERCLA violation. Respondent agrees to pay the \$8,900 penalty by directing a wire transfer to the Federal Reserve Bank of New York, as follows:

Federal Reserve Bank of New York  
ABA = 021030004  
Account = 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"

28. A payment notification letter, stating Respondent's name, the case name,

Respondent's complete address, the case docket number and the billing document number must be sent to:

Regional Hearing Clerk (E-19J)

U.S. Environmental Protection Agency, Region 5

77 West Jackson Blvd.

Chicago, IL 60604

James Entzminger (SC-5J)

Chemical Emergency Preparedness  
and Prevention Section

U.S. Environmental Protection Agency, Region 5

77 West Jackson Blvd.

Chicago, IL 60604

Terence Stanuch (C-14J)

Office of Regional Counsel

U.S. Environmental Protection Agency, Region 5

77 West Jackson Blvd.

Chicago, IL 60604

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

30. If Respondent does not timely pay the civil penalty agreed to herein, 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.

31. 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 six percent (6%) per year penalty on any principal amount 90 days past due.

### **General Provisions**

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

33. 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.

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

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 EPCRA/CERCLA Enforcement Response Policy.

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

38. Each person signing this CAFO 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.

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

40. This CAFO constitutes the entire agreement between the parties with respect to the subject matter of this CAFO.

**For PVS Chemical Solutions, Inc., Respondent:**

12/06/2012  
Date

Jonathan S. Taub  
Jonathan S. Taub  
Secretary  
PVS Chemical Solutions, Inc.

**For the U.S. Environmental Protection Agency, Complainant:**

12/14/12  
Date

Sharon Jaffess  
Sharon Jaffess, Chief  
Enforcement and Compliance Assurance Branch  
U.S. Environmental Protection Agency  
Region 5

12/14/12  
Date

Richard C. Karl  
Richard C. Karl, Director  
Superfund Division  
U.S. Environmental Protection Agency  
Region 5



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Docket No.**

**CERCLA-05-2013-0006**

**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, U.S. Environmental Protection Agency, Region 5. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

12-17-12

Date



Susan Hedman  
Regional Administrator  
U.S. Environmental Protection Agency  
Region 5

**RECEIVED**

DEC 19 2012

REGIONAL HEARING CLERK  
U.S. ENVIRONMENTAL  
PROTECTION AGENCY

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**Docket No. CERCLA-05-2013-0006**

**Certificate of Service**

I, James Entzminger, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

Frances McKay  
Plant Manager  
PVS Chemical Solutions, Inc,  
12260 South Carondolet Avenue  
Chicago, Illinois 60633

Mr. Jonathan S. Taub  
General Counsel  
PVS Chemical Solutions, Inc.  
10900 Harper Ave.  
Detroit, Michigan 48213



on the 19 day of December, 2012

  
James Entzminger Jarran P. Sanders  
U.S. Environmental Protection Agency  
Region 5