



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

OCT 19 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Phillip R. Scaletta
Ice Miller LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282-0200

Re: Giles Chemical, Greendale, Indiana
Consent Agreement and Final Order
Docket Nos. CERCLA-05-2011-0012, EPCRA-05-2011-0017,
and MM-05-2011-0006

Dear Mr. Scaletta:

Enclosed please find one fully executed original Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA filed the second original CAFO with the Regional Hearing Clerk on October 19, 2011.

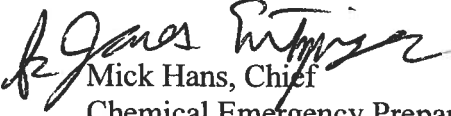
Please have your client pay the CERCLA civil penalty in the amount of \$16,675 in the manner prescribed in paragraph 61 and 63, reference your check with the CERCLA billing document number 2751230B001 and the docket numbers CERCLA-05-2011-0012 and MM-05-2011-0006.

Please have your client pay the EPCRA civil penalty in the amount of \$55,825 in the manner prescribed in paragraph 62 and 63, and reference your check with the EPCRA billing document number 2751244E002 and the docket numbers EPCRA-05-2011-0017 and MM-05-2011-0006

The payments are due on November 19, 2011.

Please feel free to contact Ruth McNamara at (312) 353-3193 if you have any questions regarding the enclosed documents. Please direct any legal questions to Jeffery Trevino, Associate Regional Counsel, at (312) 886-6729. Thank you for your assistance in resolving this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mick Hans".

Mick Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Ian Ewusi-Wilson
IN SERC Contact (w/enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:)

) Docket Nos. CERCLA-05-2011-0012;
) EPCRA-05-2011-0017; and,
) MM-05-2011-0006

Giles Chemical Division
Premier Magnesia LLC
Greendale, Indiana

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PROTECTION AGENCY

) Proceeding to Assess a Civil Penalty Under
) Section 109(b) of the Comprehensive
) Environmental Response, Compensation,
) and Liability Act, and Section 325(b)(2), (c)
) and (c)(2) of the Emergency Planning and
) Community Right-to-Know Act of 1986

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), Section 325(b)(2), (c)(1), (c)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), (c)(1), (c)(2) 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 Director of the Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent is Giles Chemical Division, Premier Magnesia LLC, a corporation, doing business in the State of Indiana.

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 hazardous substance's reportable quantity.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state, and local 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 304(a)(1) of EPCRA, 42 U.S.C. § 11004(a)(1), requires that the owner or operator of a facility must immediately provide notice, as described in Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), if a release of an extremely hazardous substance in quantities equal to or greater than a reportable quantity occurs from a facility at which hazardous chemicals

are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Section 304(c) of EPCRA, 42 U.S.C. §11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. §11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. §11004(b).

13. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), and Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1), authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation CERCLA Section 103, and EPCRA Section 304. 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 from March 15, 2004 through January 12, 2009 and to \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged Violations

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

15. Respondent is a “person” as that term is defined under Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).

16. At all times relevant to this Complaint, Respondent was an owner or operator and person in charge of the facility located at 200 Brown Street, Greendale, Indiana (facility).

17. Respondent's facility consists of a building, structure, installation, equipment, storage container or any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

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

19. Respondent's facility consists of buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites, and which are owned or operated by the same person.

20. Respondent's facility is a "facility" as that term is defined under Section 329(4) of EPCRA, 42 U.S.C. § 11049(4).

21. 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).

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

23. Sulfuric acid CAS# 7664-93-9 is listed as a toxic and hazardous substance under OSHA regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1

24. Sulfuric acid CAS# 7664-93-9 is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 1910.1200(c).

25. At all times relevant to this Complaint, sulfuric acid CAS# 7664-93-9 was produced, used or stored at the facility

26. Sulfuric acid CAS# 7664-93-9 is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

27. Sulfuric acid CAS# 7664-93-9 has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

28. On October 13, 2009, at or about 11:19 p.m. ET, a release occurred from Respondent's facility of approximately 17,393 pounds of sulfuric acid (the release).

29. In a 24 hour time period, the release of 17,393 pounds exceeded 1,000 pounds.

30. During the release, approximately 17,393 pounds spilled, leaked, pumped, poured, emptied, discharged, escaped, or dumped into the waters of the contiguous zone, surface water, land surface or subsurface strata, and/or water, or land.

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

32. The release is a "release" as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

33. Respondent had knowledge of the release on October 14, 2009, at approximately 2:30 a.m. ET.

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

35. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

36. The release was likely to affect Indiana.

37. At all times relevant to this Complaint, the Indiana State Emergency Response Commission was the SERC for Indiana under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

38. The release was likely to affect Dearborn County, Indiana.

39. At all times relevant to this Complaint, the Dearborn County Local Emergency Planning Commission was the LEPC for Dearborn County under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

Count 1

40. Complainant incorporates paragraphs 1 through 39 of this Complaint as if set forth in this paragraph.

41. Respondent notified the NRC of the release on October 14, 2009, at 5:54 a.m.

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

43. 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).

Count 2

44. Complainant incorporates paragraphs 1 through 43 of this Complaint as if set forth in this paragraph.

45. Respondent notified the Indiana SERC of the release on October 14, 2009, at 3:30 a.m.

46. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

47. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 3

48. Complainant incorporates paragraphs 1 through 47 of this Complaint as if set forth in this paragraph.

49. As of January 27, 2010, Respondent had not notified the LEPC of the release.

50. Respondent did not immediately notify the LEPC after Respondent had knowledge of the release.

51. Respondent's failure to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Count 4

52. Complainant incorporates paragraphs 1 through 51 of this Complaint as if set forth in this paragraph.

53. As of January 27, 2010, Respondent had not provided written follow-up emergency notice of the release to the SERC.

54. Respondent did not provide the SERC written follow-up emergency notice of the release as soon as practicable after the release occurred.

55. Respondent's failure to provide written follow-up emergency notice to the SERC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Count 5

56. Complainant incorporates paragraphs 1 through 55 of this Complaint as if set forth in this paragraph.

57. As of January 27, 2010, Respondent had not provided written follow-up emergency notice of the release to the LEPC.

58. Respondent did not provide the LEPC written follow-up emergency notice of the release as soon as practicable after the release occurred.

59. Respondent's failure to provide written follow-up emergency notice of the release to the LEPC as soon as practicable after the release occurred is a violation of Section 304(c) of EPCRA, 42 U.S.C. § 11004(c).

Civil Penalty

60. In consideration of Respondent's good faith negotiations and willingness to quickly settle this matter U.S. EPA has determined that an appropriate civil penalty to settle this action is \$72,500.

61. Within 30 days after the effective date of this CAFO, Respondent must pay a \$16,675 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. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

The check must note the following: In the Matter of Giles Chemical Division, Premier Magnesia LLC, the docket numbers CERCLA-05-2011-0012 and MM-05-2011-0006, and the CERCLA billing document number 2751230B001.

62. Within 30 days after the effective date of this CAFO, Respondent must pay a \$55,825 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

The check must note the following: In the Matter of Giles Chemical Division, Premier Magnesia LLC, the docket numbers EPCRA-05-2011-0017 and MM-05-2011-0006, and the EPCRA billing document number 2751244E002.

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

Regional Hearing Clerk, (E-19J)
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

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

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

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

65. 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.

66. 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. 31 C.F.R. ' 901.9. 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

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

68. This CAFO does not affect the rights 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.

69. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and Section 304 of EPCRA, 42 U.S.C. § 11004.

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

71. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA, 42 U.S.C. § 9603, and Section 304 of EPCRA, 42 U.S.C. § 11004.

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

73. 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.

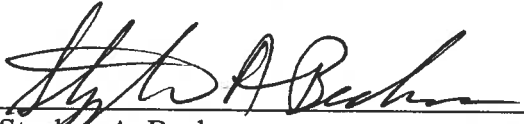
74. Each party agrees to bear its own costs and attorneys fees in this action.

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

**In the Matter of: Giles Chemical Division, Premier Magnesia LLC, Greendale, Indiana.
Docket Nos. CERCLA-05-2011-0012; EPCRA-05-2011-0017; and, MM-05-2011-0006.**

Giles Chemical Division, Premier Magnesia LLC, Respondent

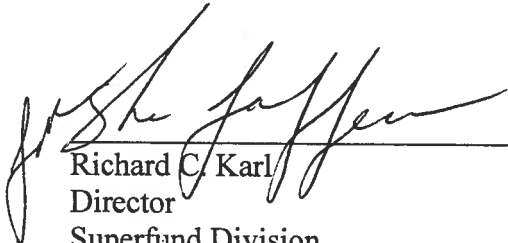
9/27/2011
Date



Stephen A. Becker
Vice President, General Counsel & Secretary
Giles Chemical Division, Premier Magnesia, LLC

U.S. Environmental Protection Agency, Complainant

10/7/2011
Date



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

**In the Matter of: Giles Chemical Division, Premier Magnesia LLC, Greendale, Indiana.
Docket Nos. CERCLA-05-2011-0012; EPCRA-05-2011-0017; and MM-05-2011-0006.**

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

10-17-11

Date



Susan Hedman
Regional Administrator
United States Environmental Protection Agency
Region 5

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**In the Matter of: Giles Chemical Division, Premier Magnesia LLC, Greendale, Indiana.
Docket Nos. CERCLA-05-2011-0012; EPCRA-05-2011-0017; and, MM-05-2011-0006.**

Certificate of Service

I, Ruth McNamara, certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket numbers CERCLA-05-2011-0012; EPCRA-05-2011-0017; and MM-05-2011-0006 with the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, and mailed a copy by first-class, postage prepaid, certified mail, return receipt requested, to Respondent and their attorney by placing it in the custody of the United States Postal Service addressed as follows:

Phillip R. Scaletta
Ice Miller LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282-0200

Paul A. Teleki
Director of Manufacturing
Giles Chemical
200 Brown Street
Greendale, Indiana 47025

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U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 19TH day of October, 2011

Ruth McNamara
Ruth McNamara
U.S. Environmental Protection Agency
Region 5