



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD

CHICAGO, IL 60604-3590

SEP 03 2009

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Matthew Brian Hitchcock
Owner
MBH Trucking, L.L.C.
672 N M-52
Post Office Box 600
Webberville, Michigan 48892

Re: MBH Trucking, L.L.C., Webberville, Michigan Consent Agreement and Final Order – Docket No: CERCLA-05-2009-0005; EPCRA-05-2009-0017; MM-05-2009-0005

Dear Mr. Hitchcock:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the other original CAFO with the Regional Hearing Clerk on SEP 03 2009.

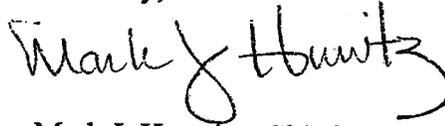
Please pay the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) civil penalty in the amount of \$13,697.40 in the manner prescribed in paragraph 12, and reference your check with the number BD 2750930B011 and docket number CERCLA-05-2009-0005.

Please pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$28,440.34 in the manner prescribed in paragraph 13 and Attachment A, and reference your checks with the number BD 2750964E029 and docket number EPCRA-05-2009-0017. *JW*

Your CERCLA payment is due on OCT 04 2009 (within thirty-calendar days of the 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 Nicole Wood-Chi, Assistant Regional Counsel, at 312-886-0664. Thank you for your assistance in resolving this matter.

Sincerely,



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

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Nicole Wood-Chi (w/ enclosure)
Office of Regional Counsel
U.S. EPA Region 5

Captain Thomas Sands, Chairperson (w/ enclosure)
Susan Parker (w/ enclosure)
Michigan Community Counsel

Judge Spenser T. Nissen (w/ enclosure)
Administrative Law Judge
U.S. EPA, Headquarters (pouch)

Joseph E. Quandt, Attorney (w/ enclosure)
Zimmerman, Kuhn, Darling, Boyd, Quandt & Phelps
412 South Union Street
Traverse City, MI 49684 (certified)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

In the Matter of:

MBH Trucking, L.L.C.
Webberville, Michigan

RECEIVED
SEP 03 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

) Docket No. CERCLA-05-2009-0005
) EPCRA-05-2009-0017
) MM-05-2009-0005
)
) Proceeding to Assess a Civil Penalty
) Under Section 109 of the Comprehensive
) Environmental Response, Compensation,
) and Liability Act and Section 325(b)(2),
) (c)(1) and (c)(2) of the Emergency
) Planning and Community Right-to-Know
) Act of 1986, 42 U.S.C. § 11045(c).

CONSENT AGREEMENT AND FINAL ORDER

1. The Complainant is the United States Environmental Protection Agency (U.S. EPA).
2. The Respondent is MBH Trucking, LLC. (MBH).
3. Complainant, by lawful delegation to the Chief of the Emergency Response Branch 1, Superfund Division, Region 5 U.S. EPA, brought this administrative action seeking a civil penalty under Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9609, and Section 325 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045.
4. On March 26, 2009, U.S. EPA filed the Complaint in this action against Respondent. The Complaint alleges that Respondent violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), by failing to immediately notify the National Response Center of a release which occurred from its transport tank facility on May 6, 2008; violated Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), by failing to immediately notify the Michigan State Emergency Response Commission (SERC) of the May 6, 2008 release and by failing to immediately notify the Ingham County Local Emergency Planning Committee (LEPC) community emergency coordinator about the May 6, 2008 release; violated Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), by

failing to provide a written follow-up emergency notice to the Michigan SERC and the Ingham County LEPC as soon as practicable after the May 6, 2008 release occurred; violated Section 311 of EPCRA, 42 U.S.C. § 11021, by failing to submit the Material Safety Data Sheet for diesel fuel or a list of hazardous chemicals including diesel fuel to the Michigan SERC, the Ingham County LEPC, and the local fire department with jurisdiction over the facility; and violated Section 312(a) of EPCRA, 42 U.S.C. § 11022(a), by failing to submit to the Michigan SERC, Ingham County LEPC, and local fire department with jurisdiction over the facility, a completed Emergency and Hazardous Chemical Inventory Form for calendar years 2005-2007, by the respective annual deadlines (March 1 of the year following the reporting year).

5. Respondent filed an Answer and requested a hearing under Section 325(b)(1)(B) of EPCRA, 42 U.S.C. § 11045(b)(1)(B), and Section 109(a)(2)(B) of CERCLA, 42 U.S.C. § 9609(a)(2).

Stipulations

6. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint.

7. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).

8. The parties consent to the terms of this CAFO.

9. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

Civil Penalty

10. Subsequent to the filing of the Complaint, Respondent produced credible evidence that it had immediately notified the LEPC of the release after knowledge thereof. Accordingly, EPA recalculated the proposed penalty in this matter to \$116,701.34.

11. In consideration of Respondent's agreement to perform a supplemental environmental project, cooperation and return to compliance, and willingness to quickly resolve this matter, and other matters as justice may require, U.S. EPA agrees to mitigate the revised penalty of \$116,701.34 to \$42,137.74.

12. Within 30 days after the effective date of this CAFO, Respondent will pay \$13,697.40 civil penalty for the CERCLA violation. Respondent may pay this penalty by cashier or certified check or electronic fund transfer. If Respondent pays the penalty by cashier's or certified check, it shall make same payable to "EPA Hazardous Substance Superfund" and send to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

for checks sent by express mail

U.S. Bank
Government Lockbox 979076 U.S. EPA Superfund Payments
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the case title of this matter: In the Matter of MBH Trucking, L.L.C., the docket number of this CAFO, CERCLA-05-2009-0005, and the billing document number

27509308011.

If Respondent pays the penalty by electronic funds transfer, it shall make same 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
Field Tag 4200 of the Fedwire should read “D68010727
Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state the following: In the Matter of MBH Trucking, L.L.C., the docket number of this CAFO, CERCLA-05-2009-0005, and the billing document number 275093^{dw}0B011.

13. As outlined in Attachment A of this CAFO, Respondent must pay a \$28,440.34 civil penalty plus interest for the EPCRA violations. Respondent may pay the penalty by cashier’s or certified check, electronic fund transfer or online payment using debit or credit card. If Respondent pays the penalty by sending a cashier’s or certified check, it shall make same payable to the “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

for checks sent by express mail

U.S. Bank
Government Lockbox 979077 U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: In the matter of MBH Trucking, L.L.C., the docket number of this CAFO, EPCRA-05-2009-0017, and the billing document number: *2750964E029 JW*

If Respondent pays the penalty by electronic funds transfer, it shall make same payable to “Treasurer, United States of America,” and sent to:

Federal Reserve Bank of New York
ABA No. 021030004
Account No. 68010727
33 Liberty Street
New York, NY 10045
Field Tag 4200 of the Fedwire should read “D68010727
Environmental Protection Agency”

In the comment or description field of the electronic funds transfer, state the following: In the Matter of MBH Trucking, L.L.C., the docket number of this CAFO, EPCRA-05-2009-0017, and the billing document number *2750964E029 JW*

If Respondent pays the penalty online using ACH debit or credit card, it shall do so by visiting www.pay.gov. Using the Search Public Forms option on the tool bar (left side of page), enter SFO 1.1 in the search field. Open the form and complete the information requested.

14. A transmittal letter, stating the case title, Respondent’s complete address, the docket number and the billing document number must accompany each payment. Respondent must send copies of the checks and transmittal letters to:

Regional Hearing Clerk, (E-19J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

James Entzminger, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

Nicole Wood-Chi, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

15. The civil penalty is not deductible for federal tax purposes.

16. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 26, below, 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.

17. 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 has been entered by the Regional Hearing Clerk.

Supplemental Environmental Project

18. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by providing release reporting and EPCRA reporting requirements training to the transportation industry in Michigan and to agricultural businesses and industry in Michigan.

19. The SEP shall consist of no less than two training or educational seminars which shall be completed by March 1, 2010. Its anticipated that the SEP will be as follows:

- a. At the January 13, 2010 Agribusiness meeting, MBH Trucking, L.L.C. will provide training on the release reporting requirements of CERCLA and EPCRA and other EPCRA reporting requirements.

- b. At the February 17-18, 2010 semi-annual meeting for the truck drivers in Michigan, MBH Trucking, L.L.C. will provide training on the release reporting requirements of CERCLA and EPCRA and other EPCRA reporting requirements.

20. Respondent must spend at least \$22,500.00 to provide this CERCLA and EPCRA training.

21. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

22. U.S. EPA may attend the training meetings to monitor Respondent's compliance with this CAFO's SEP requirements.

23. Respondent must maintain copies of the underlying data for all SEP reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any underlying data to U.S. EPA within seven days of U.S. EPA's request for the information.

24. Respondent must submit a SEP completion report to U.S. EPA by March 31, 2010.

This report must contain the following information:

- a. Detailed description of the SEP as completed;
- b. Description of any operating problems and the actions taken to correct the problems;
- c. Itemized costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;
- d. Certification that Respondent has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits and pollution reductions, if feasible).

25. Respondent must submit all notices and SEP reports required by this CAFO by first class mail to:

James Entzminger, (SC-6J)
Chemical Emergency Preparedness and Prevention Section
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3511

26. In each SEP report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

27. Following receipt of the SEP completion report described in paragraph 23 above, U.S. EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or
- c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek penalties under paragraph 26.

28. If U.S. EPA exercises option b. above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not

complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States under paragraph 26 below.

29. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. If Respondent has spent less than the amount set forth in paragraph 20, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 20.
- b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$4,334.40, in addition to any penalty required under Subparagraph a. above.
- c. If Respondent halts or abandons work on the SEP, the Respondent must pay a stipulated penalty of \$10,836.00, in addition to any penalty required under Subparagraph a. above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.
- d. If Respondent fails to comply with the schedule in paragraph 19 for implementing the SEP, or fails to submit timely the SEP completion report, Respondent must pay Stipulated Penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500.00	1 st through 14 th day
\$1,000.00	15 th through 30 th day
\$1,500.00	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone, until it achieves compliance with the milestone.

30. U.S. EPA's determination of whether Respondent satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP, will bind Respondent.

31. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use a method of payment specified in paragraphs 12-13, above, and will pay interest, handling charges, and nonpayment penalties on

any overdue amounts. The stipulated penalty will be divided with one-tenth of the stipulated penalty paid to “EPA Hazardous substance Superfund” and the remainder of the stipulated penalty paid to “Treasurer, United States of America.”

32. Any public statement that Respondent makes referring to the SEP must include the following language, “Respondent undertook this project under the settlement of the United States Environmental Protection Agency’s enforcement action against Respondent for violations of CERCLA Section 103 and Sections 304, 311, and 312 of EPCRA.”

33. Force Majeure.

- a. If any event occurs which causes or may cause delays in the completion of the SEP as required under this agreement, Respondent shall notify U.S. EPA in writing not more than 10 days after the delay or Respondent's knowledge of the anticipated delay, whichever is earlier. The notice shall describe in detail the anticipated length of the delay, the precise cause or causes of the delay, the measures taken and to be taken by Respondent to prevent or minimize the delay, and the timetable by which those measures will be implemented. The Respondent shall adopt all reasonable measures to avoid or minimize any such delay. Failure by Respondent to comply with the notice requirements of this paragraph shall render this paragraph void and of no effect as to the particular incident involved and constitute a waiver of the Respondent's right to request an extension of its obligation under this Agreement based on such incident.
- b. If the parties agree that the delay or anticipated delay in compliance with this Agreement has been or will be caused by circumstances entirely beyond the control of Respondent, the time for performance hereunder may be extended

for a period no longer than the delay resulting from such circumstances. In such event, the parties shall stipulate to such extension of time.

- c. In the event that the EPA does not agree that a delay in achieving compliance with the requirements of this Consent Agreement and Order has been or will be caused by circumstances beyond the control of the Respondent, EPA will notify Respondent in writing of its decision and any delays in the completion of the SEP shall not be excused.
- d. The burden of proving that any delay is caused by circumstances entirely beyond the control of the Respondent shall rest with the Respondent. Increased costs or expenses associated with the implementation of actions called for by this Agreement shall not, in any event, be a basis for changes in this Agreement or extensions of time under section (b) of this paragraph. Delay in achievement of one interim step shall not necessarily justify or excuse delay in achievement of subsequent steps.

34. For Federal Income Tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any costs or expenditures incurred in performing the SEP.

General Provisions

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

36. 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.

37. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), Section 304 of EPCRA, 42 U.S.C. § 11004, Section 311 of EPCRA, 42 U.S.C.

§ 11021, and Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

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

39. This CAFO constitutes a settlement by U.S. EPA of all claims for civil penalties for violations alleged in the Complaint.

40. This CAFO is a "Final Order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA and Sections 304, 311 and 312 of EPCRA.

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

42. 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.

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

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

In the Matter of:

MBH Trucking, L.L.C., Webberville, Michigan

Docket Nos. CERCLA-05-2009-0005; EPCRA-05-2009-0017; MM-05-2009-0005

MBH Trucking, L.L.C., Webberville, Michigan, Respondent

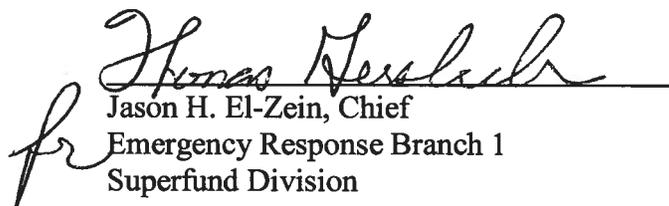
8-17-09
Date



Matthew Brian Hitchcock, Owner
MBH Trucking, L.L.C.

U.S. Environmental Protection Agency, Complainant

9-1-09
Date



Jason H. El-Zein, Chief
Emergency Response Branch 1
Superfund Division

9-1-09
Date



Richard C. Karl, Director
Superfund Division

In the Matter of:

MBH Trucking, L.L.C., Webberville, Michigan

Docket Nos. CERCLA-05-2009-0005; EPCRA-05-2009-0017; MM-05-2009-0005

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.

9/2/09
Date

Walter W. Karalutaj
for
Bharat Mathur
Acting Regional Administrator
U.S. Environmental Protection Agency
Region 5

RECEIVED
SEP 03 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of:

MBH Trucking, L.L.C., Webberville, Michigan

Docket Nos. CERCLA-05-2009-0005; EPCRA-05-2009-0017; MM-05-2009-0005

ATTACHMENT A

The EPCRA payment Schedule

Payment	Principle	Interest	Total	Due
1	\$14,220.17	\$853.21	\$15,073.38	365 days after the effective date
2	\$14,220.17	\$426.61	\$14646.78	730 days after the effective date

**In the Matter of:
MBH Trucking, L.L.C., Webberville, Michigan
Docket Nos. CERCLA-05-2009-0005; EPCRA-05-2009-0017; MM-05-2009-0005**

CERTIFICATE OF SERVICE

I, James Entzminger, certify that I hand delivered the original of the Consent Agreement and Final Order, to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies by first-class, postage prepaid, certified mail, return receipt requested, to ALJ Spencer T. Nissen and MBH Trucking, L.L.C.'s Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Spencer T. Nissen
Administrative Law Judge
USEPA Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N.W.
Mail Code 1900L
Washington, DC 20460

Joseph E. Quandt, Attorney
Zimmerman, Kuhn, Darling, Boyd, Quandt & Phelps
412 South Union Street
Traverse City, MI 49684

Matthew Brian Hitchcock, Owner
MBH Trucking, L.L.C.
672 N M-52
P.O. Box 600
Webberville, MI 48892

RECEIVED
SEP 03 2009

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 3 day of September, 2009.


James Entzminger
U.S. Environmental Protection Agency
Region 5