



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

JAN 24 2006

REPLY TO THE ATTENTION OF:

SC-6J

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

Sarah Lynn  
Bailey Cavalieri, LLC  
10 West Broad Street, Suite 2100  
Columbus, Ohio 43215

Re: Amended Complaint and Notice of Opportunity for Hearing  
Dana Atlantic, LLC, Docket No. CERCLA-05-2006-0005

Dear Ms. Lynn:

I have enclosed an Amended Complaint and Notice of Opportunity for Hearing in the matter of: *Dana Atlantic, LLC*, Docket No. CERCLA-05-2006-0005. U.S. EPA is filing this Amended Complaint under Section 22.14(c) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. § 22.14(c).

If you have any questions about this matter, please contact Ms. Ann L. Coyle, Associate Regional Counsel, at (312) 886-2248.

Sincerely,

A handwritten signature in black ink that reads "Richard C. Karl".

Richard C. Karl  
Director, Superfund Division

Enclosure Amended Administrative Complaint

cc Ms. Pat Madigan, Co-Chairperson (w/ enclosure)  
Dale Shipley, Co-Chairperson (w/ enclosure)  
Jeff Beattie (w/ enclosure)  
CJ Couch (w/ enclosure)  
OH SERC

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 5**

**In the Matter of:** )

**Dana Atlantic, LLC** )  
**4500 Dorr Street** )  
**Toledo, OH 43615** )

**Respondent.** )  
\_\_\_\_\_ )

) **Docket No. CERCLA-05-2006-0005**

) **AMENDED ADMINISTRATIVE**  
) **COMPLAINT**

NOTE

JAN 24

RE

**AMENDED COMPLAINT**

This is an administrative proceeding to assess a civil penalty under Section 109(b) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609(b).

2. The Complainant is, by lawful delegation, the Director, Superfund Division, United States Environmental Protection Agency (EPA), Region 5.

3. The Respondent is Dana Atlantic, LLC, a limited liability company doing business in the State of Ohio.

**GENERAL ALLEGATIONS**

4. Respondent is a limited liability company, incorporated in the Commonwealth of Virginia.

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

6. At all times relevant to the Amended Complaint, Glacier Daido America, LLC (Glacier) was a limited liability company, incorporated in the State of Delaware.

7. At all times relevant to this Amended Complaint, Glacier was a "person" as that term is defined under Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

8. At all times relevant to this Amended Complaint, Glacier owned or operated a facility located at 1215 South Greenwood Street, Bellefontaine, Ohio 43311 (facility).

9. Glacier's facility consisted of a building, structure, installation, equipment, pipe or pipeline, pit, storage container, or any site or area where a hazardous substance has been deposited, stored, or placed, or otherwise come to be located.

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

11. At some point after June 23, 2005, Glacier sold all of its assets, including the facility, to another entity and was renamed Dana Atlantic, LLC.

12. Dana Atlantic is a successor to Glacier.

#### Count 1

13. Complainant incorporates paragraphs 1 through 12 of this Amended Complaint as if set forth in this paragraph.

14. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), requires a person in charge of a facility to immediately notify the National Response Center as soon as that person knows of a release of a hazardous substance from the facility in an amount equal to or greater than the substance's reportable quantity.

15. Glacier was in charge of the facility on June 23, 2005, and at all times relevant to this Amended Complaint.

16. Lead (CAS #7439-92-1) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

17 On June 23, 2005, at or about 6:30 a.m., Glacier's facility discovered a release of approximately 136 pounds of lead (the Release).

18 Glacier knew of the Release on June 23, 2005, at approximately 6:30 a.m.

19 Glacier did not notify the National Response Center of the Release until June 23, 2005, at 1:45 p.m.

20 Glacier did not immediately notify the National Response Center as soon as Glacier knew of the Release.

21 Glacier's failure to notify immediately the National Response Center of the Release violated Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

#### **PROPOSED CERCLA PENALTY**

Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), authorizes EPA to assess a civil penalty of up to \$25,000 per day of violation for each CERCLA Section 103 violation that occurred before January 31, 1997. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19, increased the statutory maximum penalty to \$27,500 per day of violation for CERCLA violations that occur on or after January 31, 1997, and to \$32,500 per day for violations that occur after March 15, 2004.

Section 109(a)(3) of CERCLA, 42 U.S.C. § 9609(a)(3), requires the Administrator of EPA to consider the nature, circumstances, extent and gravity of the violations, a violator's ability to pay, prior history of violations, degree of culpability, economic benefit or savings resulting from the violation, and any other matters that justice requires, when assessing an administrative penalty under Section 109 of CERCLA.

Based upon an evaluation of the facts alleged in this Amended Complaint and the factors in Section 109(a)(3) of CERCLA, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$28,438 for the CERCLA violations (Count 1) alleged in this Amended Complaint.

Complainant calculated this penalty by evaluating the facts and circumstances of this case with specific reference to 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)."

#### **RULES GOVERNING THIS PROCEEDING**

The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty.

#### **TERMS OF PAYMENT**

Respondent may pay the proposed penalty for the CERCLA violations by sending a certified or cashier's check, payable to the "EPA Hazardous Substance Superfund," to

U.S. EPA Region 5  
Attn.: Superfund Accounting  
P.O. Box 70753  
Chicago, Illinois 60673

The CERCLA check must reference the name and docket number of this Amended Complaint. Respondent must send copies of the CERCLA check to:

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

James Entzminger  
Office of Chemical Emergency Preparedness  
and Prevention (SC-6J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Ann L. Coyle  
Office of Regional Counsel (C-14J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

**NOTICE OF OPPORTUNITY TO REQUEST A HEARING**

If Respondent contests any material fact alleged in this Amended Complaint or the appropriateness of any penalty amount, Respondent may request a hearing before an Administrative Law Judge. To request a hearing, Respondent must file a written answer within 20 days of receiving this Amended Complaint and must include in that written answer a request for a hearing. Any hearing will be conducted in accordance with the Consolidated Rules.

In counting the 20-day period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 20-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

Respondent must send any answer, with or without a request for hearing, to:

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

Respondent must send a copy of its answer and copies of all other documents that

Respondent files in this action to:

Ann L. Coyle  
Associate Regional Counsel  
Office of Regional Counsel (C-14J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the Amended Complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied. Respondent's failure to admit, deny, or explain any material factual allegation in the Amended Complaint constitutes an admission of the allegation.

Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing.

If Respondent does not file a written answer within 20 calendar days after receiving this Amended Complaint, the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the Amended Complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days

after the order becomes the final order of the Administrator of EPA under Section 22.27(c) of the Consolidated Rules.

In addition, a default penalty is subject to interest, penalty and handling charges as set forth in the Federal Claims Collection Act, 31 U.S.C. § 3717. Interest will accrue on the default penalty at the rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. After 30 days, U.S. EPA will impose a late payment handling charge of \$15 for each 30-day period over which an unpaid balance remains. In addition, EPA will apply a six percent, per year penalty on any principal amount not paid within 90 days of the effective date of the default order.

Under CERCLA Section 109(b), 42 U.S.C. § 9609(b), Respondent may obtain review of any final order relating to the CERCLA violations alleged in this Amended Complaint by filing a notice of appeal in the appropriate District Court of the United States within 30 days after the final order is issued and by simultaneously sending a copy of the notice by certified mail to the EPA Administrator.

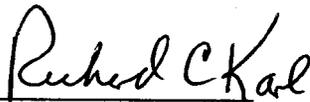
### **SETTLEMENT CONFERENCE**

Whether or not Respondent requests a hearing, Respondent may request an informal conference to discuss the facts alleged in the Amended Complaint and to discuss settlement. To request an informal settlement conference, Respondent may contact:

James Entzminger  
Office of Chemical Emergency Preparedness  
and Prevention (SC-6J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604  
(312) 886-4062

Respondent's request for an informal settlement conference will not extend the 20-day period for filing a written answer to this Amended Complaint. Respondent may simultaneously pursue an informal settlement conference and the adjudicatory hearing process. EPA encourages all parties against whom it proposes to assess a civil penalty to pursue settlement through informal conference. However, EPA will not reduce the penalty simply because the parties hold an informal settlement conference.

Date: 1-23-06

  
Richard C. Karl, Director  
Superfund Division  
U.S. EPA Region 5

In the Matter of: Dana Atlantic, LLC, Toledo, Ohio  
Section 103 of CERCLA  
Docket No.: CERCLA-05-2006-0005

IN THE MATTER OF: Dana Atlantic, LLC, Toledo, Ohio  
DOCKET NO.: CERCLA-05-12006-0005

CERTIFICATE OF SERVICE

I certify that I filed one original and one copy of the attached Administrative Amended Complaint this day with the Regional Hearing Clerk (E-19J), U.S. EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, and that I sent a copy to the Respondent, via Certified Mail, Return Receipt Requested, at the following address:

Sarah Lynn  
Bailey Cavalieri, LLC  
10 West Broad Street, Suite 2100  
Columbus, Ohio 43215

Date: January 24, 2006 James Entzminger  
James Entzminger  
Chemical Emergency Preparedness  
and Prevention Section (SC-6J)  
U.S. EPA Region 5  
77 West Jackson Boulevard  
Chicago, Illinois 60604

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