



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

AUG 23 2017

REPLY TO THE ATTENTION OF:

ELECTRONIC SERVICE
VIA EMAIL

S. Lee Johnson
Attorney
Honigman Miller Schwartz and Cohn LLP
2290 First National Bank Building
660 Woodward Avenue
Detroit, Michigan 48226-3506
sljohnson@honigman.com

Re: MAHLE Behr USA, Inc., Troy, Michigan Consent Agreement and Final Order
Docket Nos. MM-05-2017-0005 CERCLA-05-2017-0007 EPCRA-05-2017-0024

Dear Mr. Johnson:

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 August 23, 2017.

Please have your client pay the Comprehensive Environmental Response, Compensation and Liability Act civil penalty in the amount of \$18,000 in the manner prescribed in paragraph 53, and reference your check with the billing document number 2751730B007 and the docket number CERCLA-05-2017-0007.

Please have your client pay the Emergency Planning and Community Right-to-Know Act civil penalty in the amount of \$36,000 in the manner prescribed in paragraph 55, and reference your check with the docket number EPCRA-05-2017-0024.

Your payments are due on September 22, 2017.

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 Christopher Grubb, Assistant Regional Counsel, at (312) 886-7187. Thank you for your assistance in resolving this matter.

Sincerely,

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

Enclosure

cc: Captain Christopher A. Kelenske, Chairperson (w/ enclosure)
Citizen-Community Emergency Response
Coordinating Counsel
EMHSD/Michigan Department of State Police
Post Office Box 30634
Lansing, Michigan 48910

Michael Young (w/ enclosure)
Michigan DEQ Executive Office
Emergency Management Unit
Post Office Box 30457
Lansing, Michigan 48909

Mr. Eric Mathis (w/enclosure)
Senior Corporate Counsel
MAHLE Behr USA, Inc.
2700 Daley Drive
Troy, Michigan 48083
Eric.mathis@us.mahle.com
(248) 743-3700

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY EPCRA-05-2017-0024
REGION 5

In the Matter of:

MAHLE Behr USA Inc.,
Troy, Michigan,

Respondent.



Docket No. MM-05-2017-0005 CERCLA-05-2017-0007

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

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) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(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 MAHLE Behr USA Inc., a Delaware corporation doing business in the State of Michigan.

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 reportable quantity of the hazardous substance.

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. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release by the owner or operator of a facility to the community emergency coordinator for the local emergency planning committee (LEPC) for any area likely to be affected by the release and to the state emergency response commission (SERC) of any state likely to be affected by a release.

13. Under Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), with certain exceptions, the term “hazardous chemical” has the meaning given such term by 29 U.S.C. § 1910.1200(c).

14. Under 29 C.F.R. § 1910.1200(c), a hazardous chemical is any chemical which is classified as a physical or health hazard, a simple asphyxiant, combustible dust, pyrophoric gas, or hazard not otherwise classified.

15. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b) and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2), authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. The Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$54,789 per day of violation that occurred after November 2, 2015 and assessed on or after January 15, 2017.

Factual Allegations and Alleged Violations

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

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

18. At all times relevant to this CAFO, Respondent was an owner or operator of the

facility located at 2708 Daley Drive, Troy, Michigan (facility).

19. At all times relevant to this CAFO, Respondent was in charge of the facility.

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

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

22. 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.

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

24. Anhydrous ammonia (CAS #7664-41-7) is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

25. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

26. Anhydrous ammonia is classified as a physical or health hazard, a simple asphyxiant, or hazard not otherwise classified.

27. Anhydrous ammonia (CAS #7664-41-7) 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).

28. At all times relevant to this CAFO, anhydrous ammonia was produced, used or stored at Respondent's facility.

29. Anhydrous ammonia (CAS #7664-41-7) is an "extremely hazardous substance" according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

30. Anhydrous ammonia (CAS #7664-41-7) has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

31. On August 6, 2016, approximately between the hours of 1:00 a.m. and 10:00 a.m., a release occurred from Respondent's facility of approximately 900 pounds of anhydrous ammonia (the release).

32. In a 24-hour time period, the release of anhydrous ammonia exceeded 100 pounds.

33. During the release, approximately 900 pounds of anhydrous ammonia leaked or emitted into the ambient air.

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

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

36. Respondent had knowledge of the release on August 6, 2016, at approximately 10:00 a.m.

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

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

39. The release was likely to affect Michigan.

40. At all times relevant to this CAFO, the Michigan SERC was the SERC for Michigan under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

41. The release was likely to affect Oakland County, Michigan.

42. At all times relevant to this CAFO, the Oakland County LEPC was the LEPC for Oakland County, Michigan under Section 301(c) of EPCRA, 42 U.S.C. § 11001(c).

43. Respondent notified the NRC of the release on August 6, 2016, at approximately 4:00 p.m.

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

45. 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).

46. Respondent notified the Michigan SERC of release on August 6, 2016, at approximately 4:00 p.m.

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

48. 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).

49. Respondent notified the LEPC of the release on August 6, 2016, at approximately 4:00 p.m.

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).

Civil Penalty

52. Complainant has determined that an appropriate civil penalty to settle this action is \$18,000.00 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 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).

53. Within 30 days after the effective date of this CAFO, Respondent must pay a \$18,000.00 civil penalty for the CERCLA violation. Respondent must pay the penalty by electronic funds transfer, 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: MAHLE Behr USA, Inc., the docket number of this CAFO and the billing document number.

54. Complainant has determined that an appropriate civil penalty to settle this action is \$36,000.00 for the EPCRA violations. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violations, and with respect to Respondent, its ability to pay, prior history of violations, economic benefit or savings resulting from the violations and any other matters as justice may require. Complainant also considered U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

55. Within 30 days after the effective date of this CAFO, Respondent must pay a \$36,000.00 civil penalty for the EPCRA violations. Respondent must pay the penalty by electronic funds transfer, 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: MAHLE Behr USA, Inc. and the docket number of this CAFO.

56. A transmittal letter, stating Respondent's name, the case name, Respondent's complete address, the case docket number and the billing document number, if any, must accompany the payment. Respondent must send a copy of the confirmation of the electronic funds transfers and transmittal letter to:

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

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

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

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

58. 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.

59. 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 6 percent per year penalty on any principal amount 90 days past due.

General Provisions

60. Consistent with 40 C.F.R. § 22.6, the parties consent to service of this CAFO by e-mail at the following valid e-mail addresses: grubb.christopher@epa.gov (for Complainant), and SLJohnson@honigman.com and eric.mathis@us.mahle.com (for Respondent).

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

62. 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.

63. 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.

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

65. This CAFO is a "final order" for purposes of U.S. EPA's EPCRA/CERCLA Enforcement Response Policy.

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

67. Each person signing this consent agreement certifies that he or she has the authority

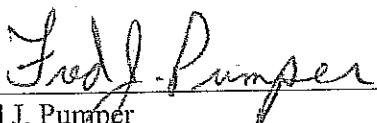
to sign for the party whom he or she represents and to bind that party to its terms.

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

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

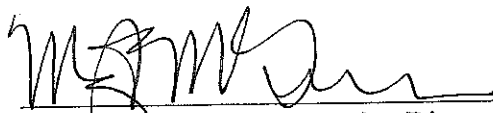
MAHLE Behr USA Inc., Respondent

08/14/2017
Date


Fred J. Pumper
Manager, Validation Test & Climatic WT Test
MAHLE Behr Troy, Inc. on behalf of
MAHLE Behr USA, Inc.

U.S. Environmental Protection Agency, Complainant

8/21/2017
Date


Margaret M. Guerriero, Acting Director
Superfund Division
U.S. Environmental Protection Agency
Region 5


In the Matter of: MAHLE Behr USA Inc., Troy, Michigan
Docket No. MM-05-2017-0005 CERCLA-05-2017-0007

EPCRA-05-2017-0024

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.

August 22, 2017
Date



Ann L. Coyle
Regional Judicial Officer
U.S. Environmental Protection Agency
Region 5

Certificate of Service

I certify that I sent a true and correct copy of the foregoing Consent Agreement and Final Order, which was filed on August 23, 2017 in the following manner to the addressees:

Copy by E-mail to
Attorney for Respondent
and Respondent

S. Lee Johnson
Attorney
Honigman Miller Schwartz and Cohn LLP
2290 First national Bank building
660 Woodward Avenue
Detroit, Michigan 48226-3506
sljohnson@honigman.com

Mr. Eric Mathis
Senior Corporate Counsel
MAHLE Behr USA, Inc.
2700 Daley Drive
Troy, Michigan 48083
(248) 743-3700

Copy by E-mail to
Attorney for Complainant:

Christopher Grubb
Grubb.christopher@epa.gov

Copy by E-mail to
Regional Judicial Officer:

Ann Coyle
Coyle.ann@epa.gov

Dated: August 23, 2017


LaDawn Whitehead
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 5

CERTIFIED MAIL RECEIPT NUMBER(S): N/A