



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

REGION 4  
ATLANTA FEDERAL CENTER  
61 FORSYTH STREET  
ATLANTA, GEORGIA 30303-8960

JUL 08 2014

UNITED PARCEL SERVICE

Mr. Richard Cutter Esq.  
Performance Fibers, Inc.  
13620 Reese Boulevard, Suite 400  
Huntersville, North Carolina 28078

Re: Performance Fibers, Inc.  
Consent Agreement and Final Order  
Docket Number: CERCLA-04-2014-2035(b)

Dear Mr. Cutter:

Enclosed please find an executed copy of the Consent Agreement and Final Order (CAFO) that resolves the Comprehensive Environmental Response, Compensation, and Liability Act matter (Docket Number CERCLA-04-2014-2035(b)) involving Performance Fibers, Inc. The CAFO was filed with the Regional Hearing Clerk, as required by 40 C.F.R. Part 22 and became effective on the date of filing.

Also enclosed, please find a copy of the "Notice of Securities and Exchange Commission Registrants' Duty to Disclose Environmental Legal Proceedings." This document puts your client on notice of its potential duty to disclose to the Security and Exchange Commission (SEC) any environmental enforcement actions taken by the U.S. Environmental Protection Agency. If you or your client has any questions with regards to the SEC's environmental disclosure requirements, you may refer to the contact phone number at the bottom of the SEC notice.

All other questions should be directed to Ms. Lucia Mendez at (404) 562-9539.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carol B. Falconer".

Carol B. Falconer  
Chief  
EPCRA Enforcement Section

Enclosures

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
REGION 4**

IN THE MATTER OF: )  
 )  
Performance Fibers, Inc. )  
 )  
Respondent )  
 )  
 )  
 )  
\_\_\_\_\_ )

Docket Number: CERCLA-04-2014-2035(b)

RECEIVED  
EPA REGION IV  
2014 JUL - 8 AM 10:30  
HEARING CLERK

CONSENT AGREEMENT AND FINAL ORDER

I. Nature of the Action

1. This is a civil penalty proceeding pursuant to Section 109 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. § 9609 and pursuant to the Consolidated Rules of Practice Governing Administrative Assessment of Civil Penalties, and the Revocation/Termination or Suspension of Permits (Consolidated Rules), codified at 40 C.F.R. Part 22. Complainant is the Director of the Air, Pesticides and Toxics Management Division, Region 4, United States Environmental Protection Agency (EPA). Respondent is Performance Fibers, Inc.

2. The authority to take action under Section 109 of CERCLA, 42 U.S.C. § 9609 is vested in the Administrator of EPA. The Administrator of EPA has delegated this authority under CERCLA to the Regional Administrators by EPA Delegations 14-31, dated May 11, 1994. The Regional Administrator, Region 4, has redelegated to the Director, Air, Pesticides and Toxics Management Division, the authority under CERCLA by EPA Region 4 Delegation 14-31 dated March 8, 1999, and updated August 6, 2004. Pursuant to these delegations, the Director of the Air, Pesticides and Toxics Management Division has the authority to commence an enforcement action as the Complainant in this matter.

3. Complainant and Respondent have conferred for the purpose of settlement pursuant to 40 C.F.R. § 22.18(b) and desire to resolve this matter and settle the allegations described herein without a formal hearing. Therefore, without the taking of any evidence or testimony, the making of any argument, or the adjudication of any issue in this matter, and in accordance with 40 C.F.R. §§ 22.13(b), and 22.18(b), this Consent Agreement and Final Order (CAFO) will simultaneously commence and conclude this matter.

II. Preliminary Statements

4. Respondent, Performance Fibers, Inc., is a corporation doing business in the State of North Carolina.

5. Respondent is a "person" as defined in Section 101(21) of CERCLA, 42 U.S.C. § 9601(9).

6. Respondent has a "facility" as that term is defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

7. Respondent's facility is located at 338 Pearidge Road, New Hill, North Carolina.

8. Respondent is an "owner or operator" of the facility as that term is defined by Section 101(20)(A) of CERCLA, 42 U.S.C. § 9601(20)(A).

### III. EPA's Allegations of Violations

#### Violation of Section 103(a) of CERCLA

9. Section 102(a) of CERCLA, 42 U.S.C. § 9602(a), required the Administrator of EPA to publish a list of substances designated as hazardous substances which, when released into the environment, may present substantial danger to public health or welfare or the environment and to promulgate regulations establishing the quantity of any hazardous substance the release of which was required to be reported under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a). EPA has published and amended such a list, including the corresponding reportable quantities (RQ) for those substances. This list, which is codified at 40 C.F.R. Part 302, was initially published on April 4, 1985 (50 Fed. Reg. 13474) and is periodically amended.

10. Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the regulations found at 40 C.F.R. § 302.6, require a person in charge of a facility or vessel to immediately notify the National Response Center (NRC), as soon as he or she has knowledge of a release of a hazardous substance from such facility or vessel in an amount equal to, or greater than the RQ.

11. Respondent was in charge of the facility on March 9, 2014.

12. Ethylene glycol is a "hazardous substance" as that term is defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), with an RQ of 5,000 pounds, as specified in 40 C.F.R. § 302.4.

13. On March 9, 2014, Respondent had a release of ethylene glycol above the RQ at the facility.

14. EPA alleges that Respondent violated the notification requirements of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), and the applicable CERCLA regulations, 40 C.F.R. § 302.6, by failing to immediately notify the NRC as soon as Respondent had knowledge of the release of ethylene glycol in an amount equal to or greater than its RQ at Respondent's facility and is, therefore, subject to the assessment of penalties under Section 109 of CERCLA, 42 U.S.C. § 9609.

15. Pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and 40 C.F.R. Part 19, EPA may assess a penalty not to exceed \$37,500 for each violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a), that occurred after January 12, 2009. Each day a violation of Section 103 continues constitutes a separate violation. Civil penalties under Section 109 of

CERCLA, 42 U.S.C. § 9609, may be assessed by Administrative Order.

#### IV. Consent Agreement

16. For the purposes of this CAFO, Respondent admits the jurisdictional allegations set out above but neither admits nor denies the factual allegations set out above.

17. Respondent waives any right to contest the allegations and its right to appeal the proposed Final Order accompanying the Consent Agreement.

18. Respondent consents to the assessment of and agrees to pay the civil penalty as set forth in this CAFO.

19. Respondent certifies that as of the date of its execution of this CAFO, it is in compliance with all relevant requirements of CERCLA.

20. Compliance with the CAFO shall resolve the allegations of violations contained herein. This CAFO shall not otherwise affect any liability of Respondent to the United States other than as expressed herein. Complainant does not waive any right to bring an enforcement action against Respondent for violation of any federal or state statute, regulation or permit, to initiate an action for imminent and substantial endangerment, or to pursue criminal enforcement.

21. Complainant and Respondent agree to settle this matter by their execution of this CAFO. The parties agree that the settlement of this matter is in the public interest and that this CAFO is consistent with the applicable requirements of CERCLA.

#### V. Final Order

22. Respondent shall pay a civil penalty of FIVE THOUSAND SEVEN HUNDRED EIGHTY FIVE DOLLARS (\$5,785) for the CERCLA violation alleged in Section III. Payment shall be paid within thirty (30) days of the effective date of this CAFO.

23. Respondent shall pay the CERCLA civil penalty by forwarding a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to one of the following addresses:

##### BY MAIL

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

##### BY OVERNIGHT

U.S. Bank  
Government Lockbox 979076  
U.S. EPA Superfund Payments  
1005 Convention Plaza  
SL-MO-C2-GL  
St. Louis, MO 63101  
(314) 425-1818

The check shall reference on its face the name and the Docket Number of the CAFO.

24. At the time of payment, Respondent shall send a separate copy of the check, and a written statement that payment has been made in accordance with this CAFO, to the following persons at the following addresses:

Regional Hearing Clerk  
U.S. EPA, Region 4  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Patricia Rubin  
U.S. EPA, Region 4  
Air, Pesticides & Toxics Management Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

Saundi Wilson  
U.S. EPA, Region 4  
Office of Environmental Accountability  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303

25. For the purposes of state and federal income taxes, Respondent shall not be entitled, and agrees not to attempt, to claim a deduction for any civil penalty payment made pursuant to this CAFO. Any attempt by Respondent to deduct any such payments shall constitute a violation of this CAFO.

26. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. Interest will therefore begin to accrue on the civil penalty from the effective date of this CAFO if the penalty is not paid by the date required. Interest will be assessed at the rate established by the Secretary of Treasury pursuant to 31 U.S.C. § 3717. A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorney fees. In addition, a penalty charge will be assessed on any portion of the debt that remains delinquent more than ninety (90) days after payment is due.

27. Complainant and Respondent shall bear their own costs and attorney fees in this matter.

28. This CAFO shall be binding upon the Respondent, its successors, and assigns.

29. The following individual is authorized to receive service for EPA in this proceeding:

Caron B. Falconer  
U.S. EPA, Region 4  
Air, Pesticides & Toxics Management Division  
61 Forsyth Street, S.W.  
Atlanta, Georgia 30303  
(404) 562-8451

30. Each undersigned representative of the parties to this CAFO certifies that he or she is fully authorized by the party represented to enter into this CAFO and legally bind that party to it.

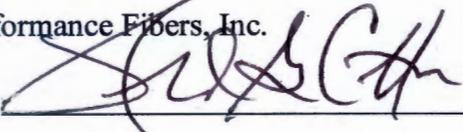
**THIS SECTION INTENTIONALLY LEFT BLANK**

VI. Effective Date

31. The effective date of this CAFO shall be the date on which the CAFO is filed with the Regional Hearing Clerk.

AGREED AND CONSENTED TO:

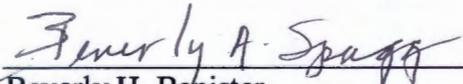
Performance Fibers, Inc.

By:  Date: 6/24/14

Name: RICHARD G. CUTLER (Typed or Printed)

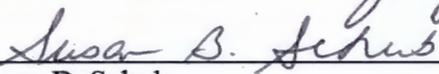
Title: VP, SECRETARY & GENERAL COUNSEL (Typed or Printed)

U.S. Environmental Protection Agency

By:  Date: 6/26/2014

Beverly H. Banister  
Director  
Air, Pesticides and Toxics Management Division

APPROVED AND SO ORDERED this 3<sup>rd</sup> day of July, 2014.

  
Susan B. Schub  
Regional Judicial Officer  
U.S. EPA Region 4  
Office of Environmental Accountability  
61 Forsyth Street  
Atlanta, Georgia 30303

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true and correct copy of the foregoing Consent Agreement and Final Order, In the Matter of Performance Fibers, Inc., Docket Number: CERCLA- 04-2014-2035(b), on the parties listed below in the manner indicated:

Caron B. Falconer  
U.S. EPA, Region 4  
61 Forsyth Street  
Atlanta, GA 30303

(Via EPA's internal mail)

Lucia Mendez  
U.S. EPA Region 4  
Office of Environmental Accountability  
61 Forsyth Street  
Atlanta, Georgia 30303

(Via EPA's internal mail)

Robert Caplan  
Senior Attorney  
U.S. EPA Region 4  
Office of Environmental Accountability  
61 Forsyth Street  
Atlanta, Georgia 30303

(Via EPA's internal mail)

Richard Cutter, Esq.  
Performance Fibers, Inc.  
13620 Reese Boulevard, Suite 400  
Huntersville, North Carolina 28078

(Certified Mail-Return Receipt Requested)

Date: 7-8-14



Patricia A. Bullock, Regional Hearing Clerk  
United States Environmental  
Protection Agency, Region 4  
Atlanta Federal Center  
61 Forsyth Street, S.W.  
Atlanta, GA 30303  
(404) 562-9511