



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

JUN 05 2013

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Dennis Reis, Esq.
Briggs and Morgan, P.A.
2200 IDS Center
80 South 8th Street
Minneapolis, MN 55402

Re: Gopher Resource LLC, Eagan, Minnesota
Consent Agreement and Final Order
Docket No. **CERCLA-05-2013-0010**

Dear Mr. Rice:

Enclosed please find one copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA filed original CAFO with the Regional Hearing Clerk on June 5, 2013.

Please have your client pay the CERCLA civil penalty in the amount of \$27,672 in the manner prescribed in paragraph 35, reference your check with the CERCLA docket number and the CERCLA billing document number 2751330B010.

The payment is due on July 5, 2013.

Please feel free to contact Ruth McNamara at (312) 353-3193 or by e-mail at mcnamara.ruth@epa.gov if you have any questions regarding the enclosed documents. Please direct any legal questions to Thomas Turner, Assistant Regional Counsel, at (312) 886-6613 or by e-mail at turner.thomas@epa.gov. Thank you for your assistance in resolving this matter.

Sincerely,

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

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:)	Docket No. CERCLA-05-2013-0010
)	
Gopher Resource, LLC)	Proceeding to Assess a Civil Penalty Under
Eagan, Minnesota,)	Section 109(b) of the Comprehensive
)	Environmental Response, Compensation and
Respondent.)	Liability Act.
)	

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Consent Agreement and Final Order
Preliminary Statement

**REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY**

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), 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 Chief of the Enforcement and Compliance Assurance Branch, Superfund Division, United States Environmental Protection Agency (U.S. EPA), Region 5.

3. Respondent Gopher Resource, LLC is a corporation doing business in the State of Minnesota.

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) provides a mechanism to alert federal 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 109(b) of CERCLA, 42 U.S.C. § 9609(b) authorizes U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103(a). 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 \$32,500 per day of violation

that occurred after 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

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

13. At all time relevant to this Complaint, Respondent was in charge of the facility located at 3385 South Highway 149, Eagan, Minnesota (facility).

14. Respondent’s facility consists of a building, structure, installation, equipment, pipe, 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.

15. Respondent’s facility is a “facility” as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

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).

17. Lead CAS# 7439-92-1 has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

18. On October 27, 2009, at or about 4:20 a.m. Central Time, a release occurred from Respondent’s facility of approximately 91 pounds of lead (Release 1).

19. In a 24 hour time period, the October 2009 release of lead exceeded 10 pounds.

20. During Release 1, approximately 91 pounds of lead leaked, emitted, discharged, escaped, into the ambient air.

21. Release 1 is a “release” as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

22. Respondent had knowledge of Release 1 on October 27, 2009, at approximately 4:29 a.m. Central Time.

23. On December 3, 2009, at or about 4:15 p.m. Central Time, a release occurred from Respondent's facility of approximately 39 pounds of lead (Release 2).

24. In a 24 hour time period, the December 2009 release of lead exceeded 10 pounds.

25. During Release 2, approximately 39 pounds of lead leaked, emitted, discharged, escaped, into the ambient air.

26. Release 2 is a "release" as that term is defined under Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

27. Respondent had knowledge of Release 2 on December 3, 2009, at approximately 4:15 p.m. Central Time.

28. Respondent notified the NRC of Release 1 on October 27, 2009, at approximately 7:28 a.m. Central Time.

29. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of Release 1.

30. Respondent's failure to immediately notify the NRC of Release 1 is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

31. Respondent notified the NRC of Release 2 on December 6, 2009, at approximately 1:39 p.m. Central Time.

32. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of Release 2.

33. Respondent's failure to immediately notify the NRC of Release 2 is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

Civil Penalty

34. Complainant has determined that an appropriate civil penalty to settle this action is \$27,672 for the CERCLA 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 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.

35. Within 30 days after the effective date of this CAFO, Respondent must pay a \$27,672 civil penalty for the CERCLA violations. Respondent must pay the penalty by sending an 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: In the Matter of Gopher Resource, LLC and the docket number of this CAFO.

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

37. 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.

38. 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

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

40. 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.

41. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

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

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

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

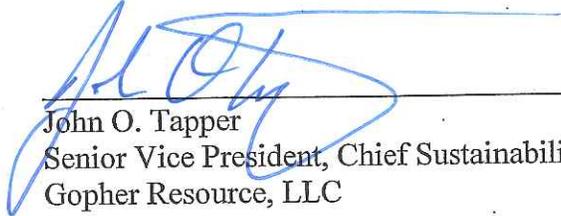
45. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.

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

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

Gopher Resource, LLC, Respondent

5/17/13
Date


John O. Tapper
Senior Vice President, Chief Sustainability Officer
Gopher Resource, LLC

U.S. Environmental Protection Agency, Complainant

5/30/13
Date


Sharon Jaffess, Chief
Enforcement and Compliance Assurance Branch
U.S. Environmental Protection Agency
Region 5

5-31-13
Date


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

In the Matter of: Gopher Resource, LLC, Egan, Minnesota
Docket No. CERCLA-05-2013-0010

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.

6/3/13
Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5


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PROTECTION AGENCY

In the Matter of: Gopher Resource, LLC, Eagan, Minnesota
Docket No. CERCLA-05-2013-0010

Certificate of Service

I, Ruth McNamara, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection Agency, Region 5, and mailed the second original CAFO by first-class, postage prepaid, certified mail, return receipt requested, to Respondent by placing it in the custody of the United States Postal Service addressed as follows:

on the 5th day of June, 2013.

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

U.S. ENVIRONMENTAL
PROTECTION AGENCY
MAY 28 2013
OFFICE OF REGIONAL
COUNSEL