



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

FEB 01 2011

REPLY TO THE ATTENTION OF:

SC-5J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Maureen A. Brennan
Baker & Hostetler LLP
PNC Center
1900 East 9th Street, Suite 3200
Cleveland, OH 44114

Re: McGean-Rohco, Inc., Cleveland, Ohio, Consent Agreement and Final Order,
Docket Nos. **MM-05-2011-0003** **CERCLA-05-2011-0006** **EPCRA-05-2011-0008**

Dear Ms. Brennan:

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 February 1, 2011.


Please pay the CERCLA civil penalty in the amount of \$7,254 in the manner prescribed in paragraphs 52 and 53, and reference your check with the billing document number 2751130B006 and the docket number(s) CERCLA-05-2011-0006.

Please pay the EPCRA civil penalty in the amount of \$7,254 in the manner prescribed in paragraphs 52 and 53, and reference your check with the billing document number 2751144E006 and the docket number(s) EPCRA-05-2011-0008.

Your payments are due on March 3, 2011.

Please feel free to contact Ginger Jager at (312) 886-0767 if you have any questions regarding the enclosed documents. Please direct any legal questions to Steven P. Kaiser, Associate Regional Counsel, at (312) 353-3804. Thank you for your assistance in resolving this matter.

Sincerely,


Silvia Palomo, Acting Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

cc: Jeff Beattie, OH SERC (w/ enclosure)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

CERCLA-05-2011-0006

IN THE MATTER OF:

McGean-Rohco, Inc.
Cleveland, OH 40155

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REGIONAL HEARING CLERK
USEPA
REGION 5

) Docket No(s). MM-05-2011-0003
) EPCRA-05-2011-0008
) Proceeding to Assess a Civil Penalty under
) Section 109(b) of the Comprehensive
) Environmental Response, Compensation,
) and Liability Act, and 325(b)(2) and 325(c)
) 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(s) 325(b)(2), (c)(1), (c)(2), of the Emergency Planning and Community Right-To-Know Act of 1986 (EPCRA), 42 U.S.C. § 11045(b)(2), (c)(1), (c)(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 (2005).
2. The Complainant is, by lawful delegation, the Branch Chief, Emergency Response Branch 1, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).
3. Respondent is McGean-Rohco, Inc., a corporation doing business in Ohio.
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) (2005).

6. Respondent consents to entry of this CAFO and the assessment of the specified civil penalty, and agrees to comply with the terms of the CAFO.

Jurisdiction and Waiver of Right to Hearing

7. McGean-Rohco, Inc. admits the jurisdictional allegations in this CAFO and neither admits or denies the factual allegations in this CAFO.

8. McGean-Rohco, Inc. 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 hazardous substance's reportable quantity.

10. 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 chemical are produced, used, or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

11. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under 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 planning commission (SERC) of any state likely to be affected by a release.

12. Section 304(c) of EPCRA, 42 U.S.C. § 11004(c), requires that, as soon as practicable after a release which requires notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), the owner or operator of the facility must provide written follow-up emergency notice setting forth and updating the information required under Section 304(b), 42 U.S.C. § 11004(b).

13. Under 29 C.F.R. § 1910.1200(d)(3), chemicals listed in 29 C.F.R. § 1910, subpart Z are hazardous chemicals.

14. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), Section 325(b) of EPCRA, 42 U.S.C. § 11045(b) and Section 325(c)(1) of EPCRA, 42 U.S.C. § 11045(c)(1) the U.S. EPA Administrator may assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103. The Debt Collections Improvements Act of 1996, 31 U.S.C. § 3701, and its implementing regulations at 40 C.F.R. Part 19 increased these statutory maximum penalties to \$27,500 per day of violation that occurred from January 31, 1997 through March 15, 2004, to \$32,500 per day for violations 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 Violations

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

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

17. At all times relevant to this CAFO, Respondent was an owner or operator of the Facility located at 2910 Harvard Avenue, Cleveland, Ohio, 44105 (Facility).
18. At all times relevant to this CAFO, Respondent was in charge of the Facility.
19. Respondent's Facility consists of one or more buildings, pieces of equipment, structures and other stationary items where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.
20. Respondent's Facility is a "facility" as that term is defined under Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).
21. 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.
22. Respondent's Facility is a "facility" as that term is defined under Section 329(4) of EPCRA 42 U.S.C. § 11049(4).
23. Nitric acid, CAS # 7697-37-2, is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
24. Nitric acid, CAS # 7697-37-2, has a reportable quantity 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.
25. Nitric acid is listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. § 1910, subpart Z, § 1910.1000, Table Z-1.
26. Nitric acid, CAS # 7697-37-2, is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e).

DH

27. At all times relevant to this CAFO, nitric acid was produced, used or stored at Respondent's Facility.
28. Nitric acid, CAS # 7697-37-2, is an "extremely hazardous substance" according to Section 302 of EPCRA, 42 U.S.C. § 11002(a)(2).
29. Nitric acid, CAS # 7697-37-2, has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.
30. Nitric acid, CAS # 7697-37-2, is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).
31. Nitric acid, CAS # 7697-37-2, has a reportable quantity of 1,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.
32. At or about 1:00 p.m., Eastern Time, on March 24, 2007, a release occurred from Respondent's Facility of approximately 6,300 lbs of nitric acid (the Release).
33. In a 24 hour time period, the Release of nitric acid exceeded 1,000 lbs.
34. During the Release, EPA estimates that more than 1,000 lbs. of nitric acid leaked into the water.
35. The Release is a "release" as that term is defined under Section 101(22) of CERCLA 42 U.S.C. § 9601(22).
36. The Release is a "release" as that term is defined under Section 329(8) of EPCRA 42 U.S.C. § 11049(8).
37. Respondent had knowledge of the Release on March 24, 2007, at approximately 1:00 p.m.
38. The Release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

DH

39. The Release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).
40. The Release was likely to affect Ohio.
41. At all times relevant to this CAFO, the Ohio State Emergency Response Commission was the state emergency response commission (SERC) for Ohio, under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).
42. The Release was likely to affect Cuyahoga County.
43. As of June 25, 2007, Respondent had not notified the NRC of the Release.
44. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release.
45. Each day Respondent failed to notify immediately the NRC of the release is a violation of Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).
46. Respondent notified the Ohio SERC of the release on March 24, 2007, at 2:03 p.m.
47. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.
48. Each day Respondent failed 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 March 24, 2007, at 2:03 p.m. Respondent did not immediately provide notice to the LEPC after Respondent had knowledge of the release.
50. Each day Respondent failed to immediately notify the LEPC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

DH

Civil Penalty

51. In consideration of size of business, Respondent's cooperation throughout settlement, and other factors as justice may require, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$7,254 for CERCLA violations and \$7,254 for EPCRA violations.

52. Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,254 civil penalty for the CERCLA violation. Respondent must pay the penalty by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund" to:

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 following: McGean-Rohco, Inc., Cleveland, Ohio, the docket number of this CAFO and the billing document number **2751130B006** Within 30 days after the effective date of this CAFO, Respondent must pay a \$7,254 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to the "Treasurer, United States of America," to:

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

The check must note the following: McGean-Rohco, Inc., Cleveland, Ohio, the docket number of this CAFO and the billing document number **2751144E006**

53. A transmittal letter, stating the case title, Respondent's complete address, the case docket number and the billing document number must accompany the payment. Respondent must send a copy of the check(s) and transmittal letter to:

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

Ginger Jager (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
77 West Jackson Boulevard
Chicago, Illinois 50504

Steven P. Kaiser (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604

54. This civil penalty is not deductible for federal tax purposes.
55. 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.
56. 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 had been entered by the Regional Hearing Clerk.

General Provisions

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

DH

58. 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.

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

60. This CAFO is a "final order" for purposes of U.S. EPA's Enforcement Response Policy for Section 103 of CERCLA.

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

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

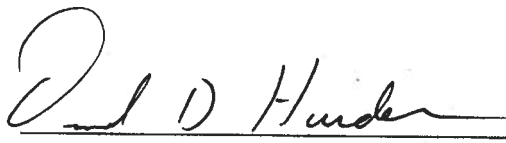
63. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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

**In the Matter of:
McGean-Rohco, Inc., Cleveland, Ohio
Docket No.**


McGean-Rohco, Inc., Respondent

12/22/10
Date


David D. Hurder, Vice President – Operations
McGean-Rohco, Inc.

U.S. Environmental Protection Agency, Complainant

1-21-11
Date


Richard C. Karl
Director
Superfund Division

In the Matter of:

McGean-Rohco, Inc., Cleveland, Ohio

Docket No. MM-05-2011-0003

CERCLA-05-2011-0006

EPCRA-05-2011-0008

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.

1-24-11

Date



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

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In the Matter of:

McGean-Rohco, Inc., Cleveland, Ohio

Docket No. MM-05-2011-0003

CERCLA-05-2011-0006

EPCRA-05-2011-0008


Certificate of Service

I, Ginger Jager, certify that I hand delivered one original and one copy of the Consent Agreement and Final Order to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, and mailed one original by first-class, postage prepaid, certified mail, return receipt requested, to Baker & Hostetler LLP by placing them in the custody of the United States Postal Service addressed as follows:

Maureen A. Brennan
Baker & Hostetler LLP
PNC Center
1900 East 9th Street, Suite 3200
Cleveland, Ohio 44114-3482

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REGION 5

on the 1 day of February, 2011.


James Entzminger
U.S. Environmental Protection Agency
Region 5