



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

JUN 27 2007

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Chris Jones
Calfee, Halter & Griswold LLP
1100 Fifth Third Center
21 East State Street
Columbus, OH 43215

Re: The City of Cincinnati, Ohio Consent Agreement and Final Order
Docket No. **CERCLA-05-2007-0012**

Dear Mr. Jones:

Enclosed please find a fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. EPA has filed the other original CAFO with the Regional Hearing Clerk on June 27, 2007.

Please pay the CERCLA civil penalty in the amount of \$17,550 in the manner prescribed in paragraphs 24 and 25, and reference your check with the billing document number 2750730B014 and the docket number **CERCLA-05-2007-0012**.

Your payments are due on July 28, 2007.

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 Deborah Carlson, Associate Regional Counsel, at (312) 3543-6121. Thank you for your assistance in resolving this matter.

Sincerely yours,

Mark J. Horwitz, Chief
Chemical Emergency Preparedness
And Prevention Section

Enclosure

cc: Regional Hearing Clerk
U.S. EPA Region 5

Deborah Carlson (w/enclosure)

Jeff Beattie, OH EPA (w/enclosure)

Marcy Toney
Regional Judicial Officer

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

IN THE MATTER OF:

**City of Cincinnati, Ohio
801 Plum Street
Cincinnati, OH 45202**

) **Docket No(s). CERCLA-05-2007-0012**
)
) **Proceeding to Assess a Civil Penalty under**
) **Section 109(b) of the Comprehensive**
) **Environmental Response, Compensation,**
) **and Liability Act.**
)
)

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OFFICE OF GENERAL COUNSEL

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), 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 (2006).

2. The Complainant is, by lawful delegation, the Chief, Chemical Emergency Preparedness and Prevention Section, Emergency Response Branch 1, Superfund Division, Region 5, United States Environmental Protection Agency (U.S. EPA).

3. Respondent is the City of Cincinnati, Ohio, municipality 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) (2006).

5. The parties agree that settling this action without the filing of a complaint or the adjudication of any issue of facts or law is in their interest and in the public interest.

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. The City of Cincinnati, Ohio admits the jurisdictional allegations in this CAFO and neither admits nor denies the factual allegations in this CAFO.

8. The City of Cincinnati, Ohio 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. Under Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), 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 \$32,500 per day for violations that occurred after March 15, 2004.

Factual Allegations and Violations

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

12. Respondent's Facility consists of a building where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located.

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

14. Aluminum sulfate, CAS #10043-01-3, is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

15. Aluminum sulfate, CAS #10043-01-3, has a reportable quantity of 5,000 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

16. On January 30, 2006, at or about 10:45 a.m., a release occurred as a result of the actions of a third-party contractor according to Respondent, from Respondent's Facility of approximately 11,276 pounds of aluminum sulfate (the release).

17. In a 24 hour time period, the release of aluminum sulfate exceeded 5,000 pounds.

18. During the release, approximately 11,276 pounds of aluminum sulfate leaked into the land surface or subsurface strata. Respondent provided evidence that the release was wholly contained within an area of excavation surrounding the release point.

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

20. Respondent had knowledge of the release on January 30, 2006 at approximately 11:05 a.m.

21. Respondent notified the NRC of the release on January 30, 2006, at 4:18 p.m.

22. Respondent did not immediately notify the NRC as soon as Respondent had knowledge of the release due to its mistaken belief that it did not have to report the release to the NRC following a telephone conference with representatives of the Ohio Environmental Protection Agency.

23. Each day that 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).

Civil Penalty

24. In consideration of the City of Cincinnati's cooperation and willingness to settle, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$17,550.

25. Within 30 days after the effective date of this CAFO, Respondent must pay a \$17,550 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. EPA – Region 5
ATTN: Superfund Receivables
P.O. Box 371531
Pittsburgh, PA 15251-7531

The check must note the case title of this matter: In the Matter of The City of Cincinnati, Ohio, the docket number of the CAFO and the billing document number 2750730B014.

26. 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-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

Ginger Jager (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
77 West Jackson Blvd.
Chicago, Illinois 50504-3511

Deborah Carlson (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Blvd.
Chicago, Illinois 60604-3511

27. Alternatively, Respondent may pay by wire transfer to the Federal Reserve Bank of New York, ABA No. 021030004, Account No. 68010727, 33 Liberty Street, New York, New York 10045. The field tag 4200 of the Fedwire message is “ 68010727 Environmental Protection Agency.”

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

29. 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.

30. 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

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

32. 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.

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

34. This CAFO is a “final order” for purposes of U.S. EPA’s Enforcement Response Policy for Section 103 of CERCLA.

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

36. 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.

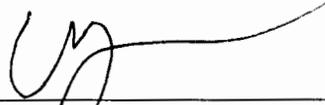
37. Each party agrees to bear its own costs and fees, including attorneys' fees, in this action.

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

SIGNATORIES

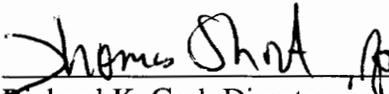
**U.S. Environmental Protection Agency
Complainant**

Date: 6/20/07

By: 

William J. Bolen, Chief
Emergency Response Branch 1
Superfund Division
U.S. EPA Region 5

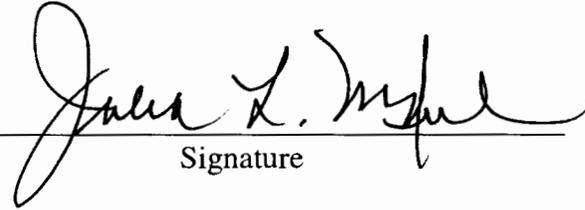
Date: 6/21/07

By: 

Richard K. Carl, Director
Superfund Division
U.S. EPA Region 5

The City of Cincinnati, Ohio Respondent

Date: 6/8/07

By: 
Signature

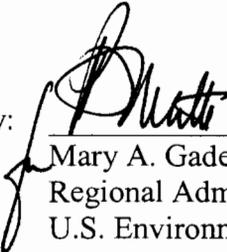
Julia L. McNeil, City Solicitor
Printed Name and Title

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Cincinnati, Ohio
Docket No. CERCLA-05-2007-0012**

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Cincinnati, Ohio
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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. IT IS SO ORDERED.

Date: 6-25-07 By: 
Mary A. Gade
Regional Administrator
U.S. Environmental Protection Agency, Region 5

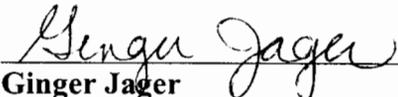
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CINCINNATI

Certificate of Service

I, **Ginger Jager**, certify that I hand delivered one original and one copy of the Consent Agreement and Final Order, docket number _____ to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and mailed one original by first-class, postage prepaid, certified mail, return receipt requested, to **Chris Jones at Calfee, Halter & Griswold LLP** by placing it in the custody of the United States Postal Service addressed as follows:

**Chris Jones
Calfee, Halter & Griswold LLP
1100 Fifth Third Center
21 East State Street
Columbus, OH 43215**

on the 27th day of June, 2007.


Ginger Jager
U.S. Environmental Protection Agency
Region 5

**Consent Agreement and Final Order
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The City of Cincinnati
Cincinnati, Ohio
Docket No. CERCLA-05-2007-0012**

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