



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

JUN 26 2007

REPLY TO THE ATTENTION OF:

SC-6J

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Ken Gould, Senior Counsel
Owens Corning Corporation
One Owens Corning Parkway
Toledo, OH 43659

Re: Owens Corning Corporation, Granville, Ohio, Consent Agreement and Final Order
Docket No. CERCLA-05-2007-0011

Dear Mr. Gould:

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 JUN 26 2007.

Please pay the civil penalty in the amount of \$3,000 in the manner prescribed in paragraph 24, and reference you check with the billing document number 2750730B013 and the docket number CERCLA-05-2007-0011.

Your payment is due on JUL 26 2007 [within 30 days of filing date].

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 Robert S. Guenther, Associate Regional Counsel, at (312) 886-0566. 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

Robert S. Guenther (w/ enclosure)

Ms. Cindy DeWulf, Co-Chairperson (w/ enclosure)
Ms. Nancy Dragani, Co-Chairperson (w/ enclosure)
Jeff Beattie (w/ enclosure)
Mel House (w/ enclosure)
Ohio SERC

Marcy Toney
Regional Judicial Officer

David T. Brown, President and CEO (w/ enclosure)
Owens Corning Corporation
One Owens Corning Parkway
Toledo, OH 43659 (certified mail)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. **CERCLA-05-2007-0011**
)
OWENS CORNING CORPORATION,) Proceeding to Assess a Civil
TOLEDO, OHIO,) Penalty under Section 109(b) of
) the Comprehensive Environmental
) Response, Compensation, and
Respondent.) Liability Act
)

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), 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), codified at 40 C.F.R. part 22.

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

3. Respondent is Owens Corning Corporation, a corporation doing business in the State of Ohio.

4. Where the parties agree to settle one or more causes of action before the filing of a Complaint, federal regulations at 40 C.F.R. § 22.13(b) provide that the administrative action may be commenced and concluded simultaneously by the issuance of a Consent Agreement and Final Order (CAFO).

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 interests 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 HEARING RIGHTS

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 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 Improvement 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 of violation for violations occurring after March 15, 2004.

GENERAL ALLEGATIONS

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

12. At all times relevant to this CAFO, Respondent owned and was responsible for the operations of buildings, structures, installations and equipment comprising a product research center located at 2790 Columbus Road, Route 16, Granville, Ohio, where at least one hazardous substance was deposited, stored, disposed of, placed, or otherwise came to be located (the Facility).

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. At all times relevant to this Complaint, Respondent was in charge of the Facility.

15. Trichloroethylene (CAS #79-01-8) is a "hazardous substance" as that term is defined under section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

16. Trichloroethylene has a reportable quantity of 100 pounds, as indicated at 40 C.F.R. part 302, table 302.4.

SPECIFIC ALLEGATIONS

17. Respondent operated the Facility on October 12, 2006, and was thus "in charge."

18. On October 12, 2006, a product testing booth at Respondent's Facility released approximately 852 pounds of trichloroethylene (the release).

19. Respondent know or had constructive knowledge of the release, and that the release exceeded the reportable quantity prescribed by 40 C.F.R. part 304, at 6:30 p.m. EDT on October 12, 2006.

20. Respondent did not notify the National Response Center of any release at its Granville facility until 8:45 a.m. EDT on October 13, 2006.

21. Respondent did not immediately notify the National Response Center as soon as Respondent knew or had constructive knowledge of a release.

22. Respondent's failure to immediately notify the National Response Center of the Granville release violated section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

CIVIL PENALTY

23. In consideration of Respondent's cooperation and good faith in resolving this matter, including Respondent's agreement to perform a supplemental environmental project as delineated below, U.S. EPA has determined that an appropriate civil penalty to settle this action is \$3,000.

24. Within 30 days after the effective date of this CAFO, Respondent must pay the civil penalty. 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: Finance
P.O. Box 371099M
Pittsburgh, PA 15251-7531

The check must note the case title of this matter: *In re: Owens Corning Corp.*, the docket number of this CAFO and the billing document number 2750730B013.

25. 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 and transmittal letter to:

Regional Hearing Clerk, (E-13J)
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

James Entzminger, (SC-6J)
Chemical Emergency Preparedness
and Prevention Section
77 West Jackson Boulevard
Chicago, IL 60604

Robert S. Guenther, (C-14J)
Office of Regional Counsel
U.S. Environmental Protection Agency, Region 5
77 West Jackson Boulevard
Chicago, IL 60604

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

27. If Respondent does not timely pay the civil penalty, or any stipulated penalties due under paragraph 41, below, 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.

28. 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.

SUPPLEMENTAL ENVIRONMENTAL PROJECT

29. Respondent must complete a supplemental environmental project (SEP) designed to protect the environment or public health by removing a trichloroethylene degreaser used for product quality testing and replacing it with an Entron degreasing system.

30. At its Granville, Ohio facility, Respondent must complete the SEP as follows:

a. By June 30, 2007, Respondent will decommission and remove the trichloroethylene product testing degreaser and replace it with the Entron degreaser system.

b. By July 31, 2007, Respondent will properly dispose of the decommissioned trichloroethylene degreaser and any associated spent trichloroethylene.

31. Respondent must spend at least \$13,000 to purchase and install the Entron degreasing system and chemicals and \$5,000 to dispose of the decommissioned trichloroethylene degreaser and remaining spent trichloroethylene.

32. In the Entron system, Respondent must not use any chemical that is more toxic or hazardous than trichloroethylene. Respondent must use Material Safety Data Sheets to determine the chemical's toxic and hazardous characteristics.

33. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order, or agreement, or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

34. U.S. EPA may inspect the facility at any time, upon reasonable notice, to monitor Respondent's compliance with this CAFO's SEP requirements.

35. Respondent must maintain copies of the underlying data for all reports submitted to U.S. EPA according to this CAFO. Respondent must provide the documentation of any data to U.S. EPA within seven days of U.S. EPA's request for the information.

36. Respondent must submit a SEP completion report to U.S. EPA by August 31, 2007. This report must contain the following information:

- a. a detailed description of the SEP as completed;

b. a description of any operating problems and the actions taken to correct the problems;

c. an itemization of costs of goods and services used to complete the SEP documented by copies of invoices, purchase orders, or canceled checks that specifically identify and itemize the individual costs of the goods and services;

d. a certification that Respondent has completed the SEP in compliance with this CAFO; and

e. a description of the environmental and public health benefits resulting from the SEP, and a quantification of the benefits and pollution reductions achieved, if feasible.

37. Respondent must submit all notices and reports required by this CAFO by first class mail to Mr. Entzminger at the address provided in paragraph 25, above.

38. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the information, the information is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

39. Following receipt of the SEP completion report described in paragraph 36, above, U.S. EPA must notify Respondent in writing that:

a. It has satisfactorily completed the SEP and the SEP report;

b. There are deficiencies in the SEP as completed or in the SEP report and U.S. EPA will give Respondent 30 days to correct the deficiencies; or

c. It has not satisfactorily completed the SEP or the SEP report and U.S. EPA will seek stipulated penalties under paragraph 41, below.

40. If U.S. EPA exercises option b. above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from U.S. EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, U.S. EPA will give Respondent a written decision on its objection. Respondent will comply with any requirements that U.S. EPA imposes in its decision. If Respondent does not complete the SEP as required by U.S. EPA's decision, Respondent will pay stipulated penalties to the United States as provided in paragraph 41, below.

41. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

a. If Respondent has spent less than the amount set forth in paragraph 31, above, Respondent must pay a stipulated penalty equal to the difference between the amount it spent on the SEP and the amount set forth in paragraph 31.

b. If Respondent has completed the SEP, but the SEP is not satisfactory, Respondent must pay \$1,800, in addition to any penalty required under subparagraph a, above.

c. If Respondent halts or abandons work on the SEP, the Respondent must pay a stipulated penalty of \$4,500, in addition to the penalty required under subparagraph a, above. Such penalties will accrue as of the date for completing the SEP or the date performance ceases, whichever is earlier.

d. If Respondent fails to comply with the schedule in paragraph 30 for implementing the SEP or fails to submit timely the SEP completion report, Respondent must pay stipulated penalties for each failure to meet an applicable milestone, as follows:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$ 500	1 st through 14 th day
\$1,000	15 th through 30 th day
\$1,500	31 st day and beyond

These penalties will accrue from the date Respondent was required to meet each milestone, until it achieves compliance with the milestone.

42. U.S. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether it made good faith, timely efforts to complete the SEP will bind Respondent.

43. Respondent must pay any stipulated penalties within 15 days of receiving U.S. EPA's written demand for the penalties. Respondent will use the method of payment specified in paragraphs 24, above, and will pay interest,

handling charges, and nonpayment penalties on any overdue amounts.

44. Any public statement that Respondent makes referring to the SEP must include the following language, "Owens Corning Corporation undertook this project in a settlement between the United States Environmental Protection Agency and Owens Corning Corporation relating to violations of CERCLA section 103."

45. Nothing in this CAFO is intended to nor will be construed to constitute U.S. EPA approval of the equipment or technology installed by Respondent in connection with the SEP under the terms of this CAFO.

46. The costs of the SEP are not deductible or depreciable for federal tax purposes.

GENERAL PROVISIONS

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

48. 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.

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

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

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

52. 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.

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

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

SIGNATORIES

COMPLAINANT,
U.S. Environmental Protection Agency

Date: June 21, 2007 By: Mark J. Horwitz
Mark J. Horwitz, Chief
Chemical Emergency Preparedness
and Prevention Section
Emergency Response Branch 1
Superfund Division
U.S. EPA Region 5

CERCLA-05-2007-0011

Date: 6/21/07 By: [Signature]
Richard C. Karl, Director
Superfund Division
U.S. EPA Region 5

RESPONDENT,
Owens Corning Corporation

Date: 6-14-2007 By: [Signature]
Signature
Vice President
Title

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Granville, Ohio
Docket No: CERCLA-05-2007-0011

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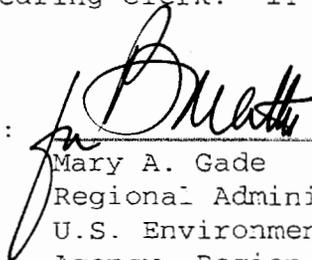
FINAL ORDER

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

Certificate of Service

I, James Entzminger, certify that I hand delivered one original and one copy of the Consent Agreement and Final Order, docket number CERCLA-05-2007-0011 to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, personally served a copy on the Regional Judicial Officer, via interoffice mail, and mailed one original by first-class, postage prepaid, certified mail, return receipt requested, to Owens Corning Corporation and its Counsel by placing them in the custody of the United States Postal Service addressed as follows:

**Ken Gould, Senior Counsel
Owens Corning Corporation
One Owens Corning Parkway
Toledo, OH 43659**

on the 26 day of June, 2007.


James Entzminger
U.S. Environmental Protection Agency
Region 5

**Consent Agreement and Final Order
IN THE MATTER OF:
Owens Corning Corporation
Granville, Ohio**

Docket No: CERCLA-05-2007-0011