



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5

77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

NOV 19 2012

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

REPLY TO THE ATTENTION OF:

Daniel T. Swanson
Senior Attorney, Environmental Law & Chair of ORA
Battelle Memorial Institute
505 King Drive
Columbus, OH 43201

Re: Battelle Memorial Institute, Columbus, Ohio Consent Agreement and Final Order,
Docket Nos. **MM-05-2013-0003** **CERCLA-05-2013-0004** **EPCRA-05-2013-0006**

Dear Mr. Swanson:

Enclosed please find a copy of the fully executed Consent Agreement and Final Order (CAFO) in resolution of the above case. The U.S. Environmental Protection Agency has filed the original CAFO with the Regional Hearing Clerk on November 19, 2012.

Please pay the CERCLA civil penalty in the amount of \$8,635 in the manner prescribed in paragraphs 46 and 47, and reference your check with the billing document number **2751330B004** and the docket number(s) **CERCLA-05-2013-0004**.

Please pay the EPCRA civil penalty in the amount of \$8,635 in the manner prescribed in paragraphs 48 and 49, and reference your check with the docket number(s) **EPCRA-05-2013-0006**.

Your payments are due on December 19, 2012.

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 Susan Tennebaum, Associate Regional Counsel, at (312) 886-0273. Thank you for your assistance in resolving this matter.

Sincerely,

Ginger Jager for Mick Hans
Michael E. Hans, Chief
Chemical Emergency Preparedness
and Prevention Section

Enclosure

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), and Section 304 of EPCRA, 42 U.S.C. § 11004, provide a mechanism to alert federal, state and local 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 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 chemicals are produced, used or stored and such release requires notice under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

12. Under Section 304(b) of EPCRA, 42 U.S.C. § 11004(b), notice required under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a), must be given immediately after the release of a reportable quantity by the owner or operator of a facility to the state emergency response commission (SERC) of any state likely to be affected by a release.

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

14. Section 109(b) of CERCLA, 42 U.S.C. § 9609(b), and Section 325(b)(2) of EPCRA, 42 U.S.C. § 11045(b)(2) authorize U.S. EPA to assess a civil penalty of up to \$25,000 per day of violation of CERCLA Section 103 and EPCRA Section 304. 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 \$37,500 per day of violation for violations that occurred after January 12, 2009.

Factual Allegations and Alleged 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 Battelle Memorial Institute, 505 King Avenue, Columbus, Ohio, 43201

(facility).

18. At all time relevant to this CAFO, Respondent was in charge of the facility.

19. Respondent's facility consists of building, structure, 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.

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. Chlorine, CAS #7782-50-5, is a "hazardous substance" as that term is defined under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

24. Chlorine, CAS #7782-50-5, has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 302, Table 302.4.

25. Chlorine is listed as a toxic and hazardous substance under Occupational Safety and Health Administration (OSHA) regulations at 29 C.F.R. Part 1910, Subpart Z, and 29 C.F.R. § 1910.1000, Table Z-1.

26. Chlorine, CAS #7782-50-5, is a "hazardous chemical" within the meaning of Section 311(e) of EPCRA, 42 U.S.C. § 11021(e), and 29 C.F.R. § 10.1200(c).

27. At all times relevant to this CAFO, chlorine was produced, used or stored at Respondent's facility.

28. Chlorine, CAS #7782-50-5, is an “extremely hazardous substance” according to Section 302(a)(2) of EPCRA, 42 U.S.C. § 11002(a)(2).

29. Chlorine, CAS #7782-50-5, has a reportable quantity of 10 pounds, as indicated at 40 C.F.R. Part 355, Appendix A.

30. On June 15, 2011, at or about 1:28 p.m. eastern time, a release began to occur from Respondent’s facility of approximately 21 lbs. of chlorine (the release).

31. In a 24 hour time period, the release of chlorine exceeded 10 pounds.

32. During the release, approximately 21 pounds of chlorine escaped into the air.

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

34. The release is a “release” as that term is defined under Section 329(8) of EPCRA, 42 U.S.C. § 11049(8).

35. Respondent had knowledge of the release on June 15, 2011, at approximately 1:28 p.m. eastern time.

36. The release was one for which notice was required under Section 103(a) of CERCLA, 42 U.S.C. § 9603(a).

37. The release required notice under Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

38. The release was likely to affect Ohio.

39. At all times relevant to this CAFO, the Ohio EPA was the SERC for Ohio under Section 301(a) of EPCRA, 42 U.S.C. § 11001(a).

40. Respondent notified the NRC of the release on June 16, 2011, at 12:24 a.m. eastern time.

41. Respondent did not immediately notify the NRC as soon as Respondent had

knowledge of the release.

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

43. Respondent notified the Ohio SERC of release on June 16, 2011 at 12:34 a.m. eastern time.

44. Respondent did not immediately notify the SERC after Respondent had knowledge of the release.

45. Respondent's failure to immediately notify the SERC of the release is a violation of Section 304(a) of EPCRA, 42 U.S.C. § 11004(a).

Civil Penalty

46. Complainant has determined that an appropriate civil penalty to settle this action is \$8,635 for the CERCLA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation and, with respect to Respondent, its ability to pay, prior history of violations, cooperation and prompt response in resolving this matter, economic benefit or savings resulting from the violation 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 (EPCRA/CERCLA Enforcement Response Policy).

47. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,635 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," by regular U.S. postal service to:

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

or by sending a cashier's or certified check, payable to "EPA Hazardous Substance Superfund,"
by express mail 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: In the Matter of Battelle Memorial Institute], the docket
number[s] of this CAFO and the billing document number 2751330B004.

48. Complainant has determined that an appropriate civil penalty to settle this action is \$8,635 for the EPCRA violation. In determining the penalty amount, Complainant considered the nature, circumstances, extent and gravity of the violation and, with respect to Respondent, its ability to pay, prior history of violations, cooperation and prompt response in resolving this matter, economic benefit or savings resulting from the violation and any other matters as justice may require. Complainant also considered U.S. EPA's EPCRA Enforcement Response Policy.

49. Within 30 days after the effective date of this CAFO, Respondent must pay a \$8,635 civil penalty for the EPCRA violations. Respondent must pay the penalty by sending a cashier's or certified check, payable to "Treasurer, United States of America," by regular U.S. postal service to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

or by sending a cashier's or certified check, payable to "Treasurer, United States of America," by express mail to:

U.S. Bank
Government Lockbox 979077
U.S. EPA Fines and Penalties
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

The check must note the following: In the Matter of Battelle Memorial, the docket number of this CAFO and the billing document number EPCRA-05-2013-0006

50. A transmittal letter, stating Respondent's name, the case name, 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. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604-3511

Ginger Jager, (SC-5J)
Chemical Emergency Preparedness
and Prevention Section
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

Susan Tennenbaum, (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Blvd.
Chicago, IL 60604

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

52. 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.

53. 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

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

55. 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.

56. Respondent certifies that it is complying with Section 103(a) of CERCLA, 42 U.S.C. § 9603(a) and Section 304 of EPCRA, 42 U.S.C. § 11004.

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

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

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


60. 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.

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

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


Battelle Memorial Institute, Respondent

10/31/12
Date

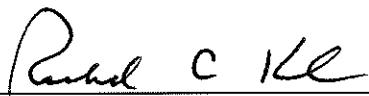

Russell P. Austin
Senior Vice President, General Counsel and
Secretary for Jeffrey Wadsworth, President &
CEO

U.S. Environmental Protection Agency, Complainant

11/9/12
Date

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

11-13-12
Date


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

In the Matter of: Battelle Memorial Institute

Docket No. [] MM-05-2013-0003

CERCLA-05-2013-0004

EPCRA-05-2013-0006

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.

11-14-12

Date



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

RECEIVED

NOV 19 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

In the Matter of: Battelle Memorial Institute

Docket No. [] MM-05-2013-0003

CERCLA-05-2013-0004

EPCRA-05-2013-0006

Certificate of Service

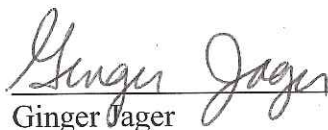
I, Ginger Jager, certify that I filed the original and a copy of the Consent Agreement and Final Order (CAFO) with the Regional Hearing Clerk, U. S. Environmental Protection Agency, Region 5, delivered a copy of the CAFO by intra-office mail to the Regional Judicial Officer, U.S. Environmental Protection 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:

Daniel T. Swanson
Senior Attorney, Environmental Law & Chair of ORA
Battelle Memorial Institute
505 King Drive
Columbus, OH 43201


NOV 19 2012

REGIONAL HEARING CLERK
U.S. ENVIRONMENTAL
PROTECTION AGENCY

on the 19th day of November, 2012


Ginger Jager
U.S. Environmental Protection Agency
Region 5